

Exhibit 5

1 STATE OF NEW YORK
2 DIVISION OF HUMAN RIGHTS

3 -----
4 NEW YORK STATE DIVISION OF HUMAN RIGHTS
5 on the Complaint of LORA ABBOTT,
6 Complainant,

7 - vs -

8 RENSSELAER COUNTY SHERIFF'S DEPARTMENT,
9 WILLIAM FENTON AS AIDER AND ABETTOR,
10 Respondents.

11 Case No. 10144564
12 Federal ID No. 16GB100204
13 -----

14 NYS Division of Human Rights
15 Albany, New York
16 9:00 a.m.
17 Friday, March 9, 2012

18 BEFORE:

19 CHRISTINE MARBACH KELLETT
20 Chief Administrative Law Judge
21 Corning Tower, 28th Floor
22 Empire State Plaza
23 P.O. Box 2049
24 Albany, New York 12220
25 518.474.3419
Ckellett@dhr.state.ny.us

WITNESSES:

LT. JIM KARAM

REPORTED BY:

Christine Greenaway, RPR-RMR

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1 APPEARANCES:

2
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O'CONNOR, L.L.P.

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9 LUIBRAND LAW FIRM, PLLC.

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12 Counsel for Respondents

13
14
15 ALSO PRESENT:

16
17 Jim Seabury
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19
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24
25

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1 P R O C E E D I N G S

2 JUDGE KELLETT: Good morning.

3 This is the fourth day of public hearing in
4 the matter of the New York State Division
5 of Human Rights on the complaint of Lora
6 Abbott Seabury versus Rensselaer County
7 Sheriff's Department, William Fenton as
8 Aider and Abettor. Case 10144564, Federal
9 ID No. 16GB100204.

10 My name is Christine Marbach
11 Kellett and I've been assigned to conduct
12 this hearing.

13 Counsel, will you please put your
14 appearances on the record and also the
15 appearances of the parties.

16 MR. LUIBRAND: Kevin Luibrand on
17 behalf of the Complainant, and Miss Abbott
18 Seabury is here with me this morning.

19 JUDGE KELLETT: Good morning.

20 MR. LUIBRAND: Good morning, your
21 Honor.

22 MR. BROUSSEAU: Shawn Brousseau
23 from Napierski, Vandenburg, Napierski &
24 O'Connor. I represent the County of Albany
25 -- I'm sorry, County of Rensselaer only,

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1 and with me is Lt. James Karam of the
2 Rensselaer County Sheriff's Department.

3 LT. KARAM: Good morning, your
4 Honor.

5 JUDGE KELLETT: Good morning.
6 Mr. Fenton continues not to be here?

7 MR. BROUSSEAU: Correct.

8 JUDGE KELLETT: Has anyone had
9 any contact with Mr. Fenton?

10 MR. LUIBRAND: No, your Honor.

11 JUDGE KELLETT: We note that he
12 was not present the other three days.

13 There's been a brief gap between
14 our last hearing, which was Friday, January
15 6th and today. So as a preliminary matter,
16 I just want to go over a couple of things.

17 I have three days of testimony.
18 I have three transcripts. The first tran-
19 script goes from Page 1 through 318; the
20 second, 320 through 563; and the third, 564
21 through, we believe, 713. So I would ask
22 the court reporter to please start with
23 714.

24 And I do want to, on the record,
25 thank the court reporter for finding that

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1 page number for us. Thank you.

2 Additionally, we have ALJ
3 Exhibits 1 through 3 in and Respondent's 1
4 through 27?

5 MR. BROUSSEAU: And there are a
6 couple I need to clean up that aren't in
7 yet.

8 JUDGE KELLETT: But essentially
9 that's it?

10 MR. BROUSSEAU: Yes.

11 JUDGE KELLETT: And Complainant's
12 1 through, I have like 28, you said?

13 MR. LUIBRAND: I would concur
14 with whatever the record shows, your Honor.
15 I didn't look at it.

16 JUDGE KELLETT: I agree, and if
17 the record may show I'm wrong, because I
18 have a little issue right now, but we'll
19 resolve it later on.

20 I did receive correspondence from
21 the parties regarding time and attendance
22 records. Are you going to introduce that
23 sheet of paper?

24 MR. BROUSSEAU: You're referring
25 to the letter I gave you last time, Judge?

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1 JUDGE KELLETT: Yes.

2 MR. BROUSSEAU: I can.

3 JUDGE KELLETT: Okay, we'll take
4 care of that at that time.

5 And we were here another day, but
6 there was a snafu out of the Bronx office
7 and we weren't able to reassemble, so the
8 delay is not the fault of the parties, but
9 rather the Division. I do recognize that.

10 MR. BROUSSEAU: Regarding that
11 letter, your Honor, my understanding is
12 Mr. Luibrand, I don't know whether he has
13 had a chance to submit anything as to
14 whether he concurred with my computations
15 or not.

16 JUDGE KELLETT: Okay.

17 MR. BROUSSEAU: So I assume he
18 wants or I think you wanted to submit
19 something after the hearing?

20 MR. LUIBRAND: What I was
21 intending to do, your Honor, was once the
22 record is complete, because the time and
23 attendance records are in evidence, it's
24 really an analysis of those, and I was
25 going to do that and make that part of my

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1 post-hearing submission.

2 JUDGE KELLETT: Okay. Just so
3 the transcript is clear, we are discussing
4 time and attendance because there's a
5 question of overlap between some of the
6 identified individuals and the Complainant,
7 and Mr. Fenton and the Complainant, and
8 that's what we're talking about.

9 MR. LUIBRAND: Yes.

10 MR. BROUSSEAU: And, Judge, I'm
11 fine waiting to submit that letter or that
12 evidence -- or not that evidence, that
13 analysis in the post-hearing brief because
14 the time and attendance records are in
15 evidence.

16 JUDGE KELLETT: Okay. I would
17 almost prefer that it come in --

18 MR. BROUSSEAU: Okay.

19 JUDGE KELLETT: -- because the
20 post-hearing briefs are not evidence.

21 MR. BROUSSEAU: Okay.

22 JUDGE KELLETT: And so if it's
23 going to be referenced, it would be better
24 if it were an exhibit.

25 MR. BROUSSEAU: Okay. All right.

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1 And then Kevin can reference it as an
2 exhibit and take issue with it if he wants
3 to in his post-hearing.

4 JUDGE KELLETT: Okay.

5 MR. BROUSSEAU: Do you still have
6 that in front of you, Judge?

7 JUDGE KELLETT: It's in my office.
8 I'll get it at break.

9 MR. BROUSSEAU: Okay.

10 JUDGE KELLETT: Who is calling
11 the first witness today?

12 MR. BROUSSEAU: I am. I am
13 calling Lt. James Karam.

14 JUDGE KELLETT: Thank you.
15 Mr. Karam -- Lt. Karam, please come up and
16 take the witness stand.

17 Lieutenant, in a moment you're
18 going to be sworn in as our next witness,
19 and after that I'm going to ask you to
20 state your name, correct spelling, and your
21 business address for the record. After
22 that you'll be asked questions by the
23 attorneys - first by the attorney who has
24 called you, and then by the attorney for
25 the Complainant, and at any time by me.

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1 Please listen carefully to the
2 questions and answer the question that is
3 asked. If you don't know, don't recall, or
4 don't understand the question, those are
5 fine responses. I don't want you to
6 speculate or guess.

7 If there is an objection to the
8 question, please wait until I have ruled on
9 the objection before answering. We're in a
10 room that's going to get very warm or very
11 cold. If you need a break for any reason
12 at any time, please let me know.

13 THE WITNESS: Thank you, your
14 Honor.

15 JUDGE KELLETT: Please swear the
16 witness.

17 | - - -

18 L T. J A M E S K A R A M,
19 having been duly sworn, was examined
20 and testified as follows:

21 - - -

22 JUDGE KELLETT: Please state your
23 name and business address for the record.

24 THE WITNESS: My name is James
25 Karam, K-a-r-a-m. And my address, my

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1 business address, is 4000 Main Street,
2 Troy, New York. 12180.

3 MR. BROUSSEAU: Judge, you don't
4 mind if I remain seated?

5 JUDGE KELLETT: I do not.

6 I do just want to make sure, is
7 that Mr. Seabury back there?

8 MR. SEABURY: Yes.

9 JUDGE KELLETT: But he's not
10 going to be a witness?

11 MR. LUIBRAND: No.

12 - - -

13 DIRECT EXAMINATION

14 BY MR. BROUSSEAU:

15 Q. Lt. Karam, can you just give the
16 Administrative Law Judge a brief history of your
17 educational background and how you came into law
18 enforcement.

19 A. My educational background is that of
20 attaining an Associate's degree from Hudson Valley
21 Community College in criminal justice. I also
22 attended high school at Catholic Central High School
23 in Troy, New York.

24 Q. And what did you do after you got your
25 degree in criminal justice?

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1 A. Well, I received my degree as I was
2 working. I started my employment with the Sheriff's
3 Office in 1988.

4 Q. And when you first began working for the
5 Sheriff's Department, what job were you in?

6 A. I was a correctional officer when I first
7 joined the Sheriff's Office -- if you like me to
8 give you a time line or rundown --

9 Q. Sure. Why don't you tell me how your
10 career progressed with the Sheriff's Department.

11 A. I was made a transport officer in
12 approximately 1990. I was promoted to corporal in
13 1992; sergeant in 1993; first sergeant and training
14 director in 1999; and lieutenant in 2001 or 2.

15 Q. During the relevant time period, the
16 spring through the summer of 2010, what position did
17 you hold at the Rensselaer County Sheriff's Depart-
18 ment?

19 A. Lieutenant in charge of internal affairs
20 and training and some other areas.

21 Q. As a lieutenant in charge of the current
22 internal affairs, what were you specific job duties?

23 A. I would investigate allegations of
24 excessive uses of force; complaints as they came in
25 from the citizens outside; personnel complaints

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1 against department members; special investigations
2 as assigned by the sheriff; and the bulk of the work
3 that I did was mainly background investigations.

4 Q. And who did you report to then?

5 A. For internal affairs matters, it was
6 mainly the sheriff. But sometimes it would be the
7 undersheriff in the sheriff's absence; superinten-
8 dent if we were working on a case together.

9 Q. You did not report to Capt. Smith;
10 correct?

11 A. He's above me in rank, so directly
12 reporting to him on internal affairs matters, no.
13 Other issues, yes.

14 Q. What other issues might you report to him?

15 A. Well, if it was a training issue, I would
16 report to him. If it was an issue with keys or
17 cameras, or I had to deal with, you know, bringing
18 somebody in from a higher level, I would deal with
19 him.

20 But the internal affairs stuff, again,
21 directly with the sheriff for the most part, unless
22 I was working on a specific case with the captain.

23 Q. How long have you known Lora Abbott?

24 A. Ever since she started working with us,
25 and I'm not quite sure of the date of hire, Lora's

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1 date of hire. It has been awhile, though.

2 Q. As of the spring of 2010, what was Lora
3 Abbott's rank at the county jail?

4 A. Sergeant.

5 Q. What shift did she typically work?

6 A. She worked A line, I believe is her shift,
7 as the watch commander, but she did overtime.

8 Q. And did there come a time when you learned
9 that Lora Abbott had made a complaint that Sgt.
10 Richard Fenton had sexually assaulted her on the
11 tier a few years prior to 2010?

12 A. Yes.

13 Q. How did you first come to learn of that?

14 A. I was notified by, I believe, Capt. Smith.

15 Q. Were you notified verbally or in writing
16 or some other way?

17 A. It was verbally.

18 Q. What did you do after Capt. Smith told you
19 about that?

20 A. I ended up investigating the allegations
21 of sexual harassment. And it was, it was something
22 that I took to be pretty important because Lora was
23 a friend of mine and still is a friend of mine. I
24 still consider her to be my friend.

25 Q. Did someone assign you to investigate it?

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1 A. When I was notified that the complaint had
2 been made in writing, we notified the superinten-
3 dent, I believe. The time line of who we call when,
4 I'm unsure of that, but I know that when Capt. Smith
5 told me that he had a complaint in writing, that we
6 made the notifications of the chain of command and
7 that it was assigned back to me to investigate.

8 Q. When did the investigation regarding Lora
9 Abbott's complaint began? What date; do you know?

10 A. If I can take a look at my notes, I'll let
11 you know the exact date.

12 MR. BROUSSEAU: Judge, I've got a
13 marked copy for you. These are time lines
14 he prepared.

15 MR. LUIBRAND: I think I handed
16 them back.

17 MR. BROUSSEAU: I don't have --

18 THE WITNESS: If I may, I think I
19 have another copy in my --

20 MR. BROUSSEAU: Actually, I do
21 have another copy, Judge. Let me make sure
22 it's the same one.

23 (Respondent's Exhibit 33 marked
24 for identification.)

25 BY MR. BROUSSEAU:

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1 Q. Lt. Karam, we give you what's marked as
2 Respondent's 33. Can you just identify what this
3 document is?

4 A. It's a time line that I prepared of the
5 reports and actions taken.

6 Q. Is it a time line that you prepared from
7 your investigative file to help you give testimony
8 here at this hearing?

9 A. That's correct.

10 MR. BROUSSEAU: I would offer
11 Exhibit 33 into evidence.

12 MR. LUIBRAND: Can I have a brief
13 voir dire, your Honor?

14 JUDGE KELLETT: Yes, you may.

15 - - -

16 VOIR DIRE DIRECT EXAMINATION

17 BY MR. LUIBRAND:

18 Q. Lt. Karam, this is what we generally call
19 a Word document on a computer; is that a fair state-
20 ment?

21 A. Yes.

22 Q. So it can be revised and amended at any
23 point in time; right?

24 A. Yes.

25 Q. Is there original notes or anything that

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1 exists that you referred to when you -- that you
2 used as an original source to place these different
3 entries on here?

4 A. The original source that I used was the
5 actual investigative file, which I have right there.
6 But it was mainly the reports. As I pulled the
7 reports out of the investigative file, I made the
8 time line.

9 I also have some handwritten notes that I
10 would make on the inside of the manila folders that
11 contain the reports, and some of this information
12 may have come off of, not only the front page of the
13 manila file folders, but also on the inside. I
14 would make notes as I went along.

15 Q. What does this summary relate to? Is it a
16 particular allegation or is it just what you did in
17 connection with a number of allegations?

18 A. This was -- it started with, as I'm
19 looking at the form itself, it starts with Sgt.
20 Abbott's complaint against Richard Fenton for
21 sleeping on the job, and then I believe it ends with
22 -- it's kind of a time line of that time period
23 between April 21st and, it looks to be July 20th of
24 2011.

25 MR. LUIBRAND: Judge, I have no

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1 objection to the document being received
2 for what's it's been described as.

3 JUDGE KELLETT: Very well, it's
4 been received for what it has been
5 described as.

6 (Whereupon, Respondent's Exhibit
7 33 was received into evidence.)

8 - - -

9 DIRECT EXAMINATION

10 CONTINUED BY MR. BROUSSEAU:

11 Q. In reviewing your time line, Lt. Karam,
12 does that refresh your recollection as to when the
13 investigation regarding Lora Abbott's sexual harass-
14 ment complaint began?

15 A. Yes.

16 Q. And when did the investigation begin?

17 A. May 27, 2010.

18 Q. Was that the same date that Lora Abbott
19 made the written complaint of sexual harassment?

20 A. Yes.

21 Q. And what was the first thing that you
22 remember doing to investigate the sexual harassment
23 complaint?

24 A. I'm sorry, can you repeat that question?

25 Q. Sure. What's the first thing you remember

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1 doing to investigate the sexual harassment com-
2 plaint?

3 A. Reviewing the reports as they were
4 submitted.

5 Q. And you reviewed reports submitted by
6 whom?

7 A. Sgt. Abbott and CO Hoffman.

8 Q. Did there come a time when you spoke to
9 Lt. Abbott about her complaint?

10 A. Sgt. Abbott?

11 Q. Sgt. Abbott, yes.

12 A. Yes.

13 Q. When did you first speak to Sgt. Abbott
14 about her complaint?

15 A. Without giving a specific time, because
16 I'm not exactly sure about the specific time or the
17 date, I've had several conversations with Sgt.
18 Abbott, numerous conversations with Sgt. Abbott at
19 work, and also calls that were made on my cell
20 phone, personal cell phone to her cell phone, about
21 the investigation and trying to get information with
22 regard to when the actual incident had occurred with
23 her because there was a lot of time, there was a lot
24 of time that had gone by when the incidents had
25 actually occurred and when it was reported.

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1 Q. Were you able to pinpoint, from looking at
2 time and attendance records, approximately when the
3 incident with William Fenton could have occurred?

4 A. To the best of both of our abilities, Sgt.
5 Abbott and myself had discussed, trying to pinpoint
6 and bracket it in time when it actually happened,
7 and I think we did a pretty good job at it, but it
8 was still within several months.

9 It was after the end of a relationship
10 that she had and it was before -- I think it was
11 after the relationship she had with Bob -- I forget
12 his last name -- and before Sgt. Seroy was promoted.
13 There was like a little bit of time frame there.

14 Q. And when you say Sgt. Seroy, Sgt. Seroy is
15 Stacy Stover?

16 A. Stacy Stover is Sour (phonetic) now. I
17 think it was Seroy, and then it went to Stover, and
18 now it's Sour.

19 Q. She remarried and now it's Sour?

20 A. Yes.

21 Q. Was there also a criminal investigation
22 that was taking place at the time?

23 A. Yes.

24 Q. Who was conducting the criminal investi-
25 gation?

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1 A. Our highway patrol investigator, William
2 Webster.

3 Q. What was your understanding of the purpose
4 of the criminal investigation?

5 A. The Sheriff had assigned it to Investi-
6 gator Webster to determine whether or not charges
7 should be filed against Sgt. Fenton.

8 Q. Criminal charges should be filed?

9 A. Criminal charges, right.

10 Q. You were conducting the internal sexual
11 harassment investigation and Billy Webster was
12 investigating Sgt. Fenton's potential criminal
13 charges; correct?

14 A. That's correct.

15 Q. What happened regarding Sgt. Fenton's
16 employment at the Rensselaer County Sheriff's
17 Department on May 27th, 2010?

18 A. He was immediately suspended.

19 Q. And was he suspended with pay or without
20 pay?

21 A. I believe at the time he was suspended
22 with pay.

23 Q. Do you have an understanding why he would
24 initially be suspended with pay?

25 A. The allegations of sexual harassment were

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1 severe enough that he needed to be removed from
2 employment -- or not removed from employment, but
3 removed from the work place until we could do a
4 preliminary investigation, get the reports from
5 the -- well, the Complainants had signed initial
6 reports, but they also had to be interviewed by the
7 criminal investigator.

8 Then there were other individuals that
9 were also mentioned as being part of this
10 investigation and possible victims of the sexual
11 harassment, so we had to get reports from them, too.

12 We wanted to ensure that the work place
13 was safe, so he was initially taken out of the work
14 place and paid, which we have to do, until preferred
15 charges against somebody.

16 Unless we know that somebody is a danger
17 to other staff or to inmates, then we can suspend
18 them without pay immediately. But in this case,
19 until we had developed more information, that's what
20 we did.

21 Q. Okay. And I believe Capt. Smith might
22 have previously testified that he thought that Sgt.
23 Fenton was initially suspended without pay, and
24 you've checked the records; is that accurate?

25 A. I would have to go back through them again

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1 and look exactly at his pay records, but I believe
2 he was suspended with pay. I could be wrong, but I
3 believe he was suspended with pay and --

4 JUDGE KELLETT: Is this
5 suspension with or without pay pursuant
6 to a Collective Bargaining Agreement or
7 provision of the Civil Service Law?

8 THE WITNESS: In the Collective
9 Bargaining Agreement, there is a provision
10 in there that allows us to suspend without
11 pay until we can prove that the staff
12 member or show that the staff member is a
13 danger to other staff members or the
14 inmates.

15 BY MR. BROUSSEAU:

16 Q. And then your understanding is that his
17 employment situation was charged to suspended
18 without pay once formal charges were preferred?

19 A. That's correct.

20 Q. From May 27th, 2010 forward, did Sgt.
21 Abbott ever have to work with Sgt. Fenton?

22 A. No.

23 Q. Now, you said that there were additional
24 individuals that needed to be interviewed by you and
25 the criminal investigator. Do you recall who those

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1 individuals were?

2 A. There was an officer by the name of Wendy
3 Vega, who, through my conversation with Sgt. Abbott,
4 Sgt. Abbott believed that Ofc. Vega may have been
5 the subject of sexual harassment by Ofc. Fenton.

6 Q. In addition, I think there's been testi-
7 mony that -- and let's just refer to her as Stacy
8 Stover because that was her name at the time of
9 this, the investigation was going on -- Stacy Stover
10 and another individual that needed to be inter-
11 viewed?

12 A. Yes.

13 Q. Did you eventually have the opportunity to
14 interview CO Vega? Wendy Vega?

15 A. I asked her to do a report. Actually, I
16 believe it may have been Capt. Smith that asked her
17 to do the report.

18 Q. You eventually received and reviewed the
19 report from Wendy Vega?

20 A. That's correct, and I actually talked to
21 her about the report when she submitted it.

22 Q. And what do you recall Wendy Vega telling
23 you during the investigation?

24 A. She told me that she was never sexually
25 harassed by Sgt. Fenton.

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1 Q. What about Stacy Stover?

2 A. Stacy Stover, according to some of the
3 information that I was getting from Sgt. Abbott, was
4 reluctant about coming forward to discuss the
5 incident she had with Sgt. Fenton.

6 Q. Were you eventually able to speak with
7 Stacy Stover?

8 A. Yes.

9 Q. And what was the process of finally being
10 able to speak with Stacy Stover? What effort did
11 you have to go through to speak with her?

12 A. Well, there was a delay in time with me
13 discussing anything with Stacy Stover or bringing
14 her in for an interview because I wanted -- and as a
15 matter of course of business, we allowed the crimi-
16 nal investigations to be conducted first and for the
17 witnesses to be, or any potential complainants to be
18 interviewed by the criminal investigators first so
19 that I wasn't contaminating their investigation in
20 any way by letting information out that would help
21 them in the criminal prosecution.

22 And then she was reluctant to come forward
23 as a witness and she got the union involved in, I
24 wouldn't say stalling, but that's pretty much what
25 it was. She was kind of stalling being interviewed

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1 by the criminal investigator because she was getting
2 advice from the former union president and vice
3 president and the attorneys that she did not have to
4 file a complaint, which wasn't what we were looking
5 at.

6 We believed she was a witness to possible
7 conduct or actions that Mr. Fenton may have had and
8 also to conversations that may have occurred between
9 her and Sgt. Abbott.

10 Q. It was her prerogative whether she wanted
11 to file a complaint, but it was not her prerogative
12 whether she was going to appear and speak to you as
13 a witness?

14 A. According to our admin. manual, which
15 governs the staff member's conduct, she has to
16 comply with an investigation if she is called as a
17 witness.

18 JUDGE KELLETT: Is that in
19 evidence?

20 MR. BROUSSEAU: It is not, no.

21 JUDGE KELLETT: You call it an
22 admin. manual?

23 THE WITNESS: Administrative
24 manual, your Honor.

25 MR. BROUSSEAU: Rensselaer County

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1 Sheriff's Department Administrative Manual,
2 is that what you're referring it?

3 THE WITNESS: Yes.

4 MR. BROUSSEAU: I do have a copy
5 of it.

6 (Respondent's Exhibit 32 marked
7 for identification.)

8 BY MR. BROUSSEAU:

9 Q. Lt. Karam, I'm just going to show you
10 what's been marked for identification as
11 Respondent's Exhibit 32, which is entitled
12 Rensselaer County Office of the Sheriff Corrections
13 Bureau Administrative Manual. Can you take a look
14 at that.

15 JUDGE KELLETT: While he's
16 looking at that, Mr. Luibrand, was Stacy
17 Stover at one time an inlaw of your
18 Complainant?

19 MR. LUIBRAND: Yes.

20 JUDGE KELLETT: I'm making sure
21 I'm keeping all this in my mind.

22 MR. LUIBRAND: You have a good
23 memory, your Honor.

24 JUDGE KELLETT: Off the record.

25 (Discussion off the record.)

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1 BY MR. BROUSSEAU:

2 Q. Lt. Karam, is Exhibit 32 a true and
3 accurate copy of the Sheriff's Department
4 administrative manual that you were just referring
5 to?

6 A. Yes.

7 MR. BROUSSEAU: I would offer
8 Exhibit 32 into evidence.

9 JUDGE KELLETT: Any objection?

10 MR. LUIBRAND: Just a brief voir
11 dire.

12 - - -

13 VOIR DIRE DIRECT EXAMINATION

14 BY MR. LUIBRAND:

15 Q. Was this the manual that was in effect as
16 of May of 2010?

17 A. Yes.

18 MR. LUIBRAND: No objection, your
19 Honor.

20 JUDGE KELLETT: It's received.

21 (Whereupon, Respondent's Exhibit
22 32 was received into evidence.)

23 - - -

24 DIRECT EXAMINATION

25 CONTINUED BY MR. BROUSSEAU:

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1 Q. Did you eventually have the opportunity to
2 interview Sgt. Stacy Stover?

3 A. Yes.

4 Q. What type of interview did you conduct?
5 Informal interview, a formal recorded interview, or
6 something else?

7 A. It was a formal recorded interview.

8 Q. Did she have a union representative
9 present?

10 A. Yes, she did.

11 Q. When did that formal recorded interview
12 finally take place?

13 A. I believe it was sometime in August, and
14 if you refer to the notes -- yep, it was August 2nd.

15 Q. And you've given me audio recordings of
16 the recorded interviews that you did take in this
17 case and those were some that you recorded in your
18 office at the time pursuant to the policies and
19 procedures of the Rensselaer County Sheriff's
20 Department; correct?

21 A. That's correct.

22 MR. BROUSSEAU: And I believe,
23 Judge, those are already in evidence.

24 BY MR. BROUSSEAU:

25 Q. What do you recall Stacy Stover telling

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1 you during the recorded interview?

2 A. If I may, I need to kind of back up a
3 little bit and clarify something.

4 Q. Sure.

5 A. When Sgt. Abbott told me that Stacy Stover
6 and she had discussed Sgt. Fenton's actions and that
7 if, according to Sgt. Abbott, if anything happened
8 in the future to any one of the new female officers,
9 that they would both agree to come forward and
10 complain about Sgt. Fenton.

11 Sgt. Abbott was adamant that they had that
12 pact together and that Sgt. Stover had been a victim
13 of Sgt. Fenton. So I carefully wanted to develop
14 the information that I needed in order to interview
15 her.

16 Although she was reluctant as a complain-
17 ant, I didn't want to force her into a position to
18 complain, but I felt that if I developed enough
19 information to talk to her about the situation that
20 I would be able to get her to discuss what actually
21 happened between her and Fenton.

22 During the interview, that's exactly what
23 happened. We ended up discussing the interaction
24 that she had with Sgt. Fenton; and she did, in fact,
25 admit to me during the interview that Sgt. Fenton's

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1 actions towards her were sexual harassment.

2 Q. During the initial stage of the investi-
3 gation when Miss Stover was not cooperating, did
4 Lora Abbott give you some additional information to,
5 you know, corroborate the fact that she and Stacy
6 had talked about this pact?

7 A. I believe that the information did come
8 from Sgt. Abbott and that she -- that Sgt. Abbott
9 said that Stacy Stover actually did a report during
10 her basic supervisory training at Albany County on
11 sexual harassment and that she used her incident
12 with Sgt. Fenton as the example that she presented
13 to the class.

14 I then did try to get ahold of any reports
15 that may still be on file at Albany and I talked to
16 the training director over there to see if any of
17 that stuff could be corroborated, which I couldn't
18 get it corroborated through the training she went
19 through, but Sgt. Stover did admit to it during the
20 interview.

21 Q. Okay. And I believe there's already been
22 testimony, Sgt. Abbott testified or told you about a
23 conversation that occurred between her and Stacy
24 Stover on her cell phone when her cell phone was on
25 speaker phone and her daughter was a witness about

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1 this?

2 A. That's correct.

3 Q. And you talked to Lora Abbott about that;
4 didn't you?

5 A. That's correct.

6 Q. And you received a written report from
7 Lora Abbott regarding that event?

8 A. That's also correct.

9 Q. And did you speak to Lora's daughter, who
10 was a witness to this telephone conversation?

11 A. Yes, I did.

12 Q. And did you even take a recorded interview
13 of her?

14 A. Yes, I did.

15 Q. During the course of your investigation,
16 did you come to any determination as to whether or
17 not Lora Abbott was telling the truth when she said
18 that she and Stacy Stover had a pact?

19 A. I would have to actually go through and
20 listen again to my interview with Stacy Stover.

21 Q. In any event, what Lora Abbott said -- I'm
22 sorry, your Honor.

23 JUDGE KELLETT: I'm trying to
24 understand your answer. His question I
25 was hearing was asking if you came to a

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1 conclusion as to whether or not there had
2 been a pact between Stacy Stover and Lora
3 Abbott.

4 Did you come to a conclusion
5 about a pact?

6 THE WITNESS: I believed Sgt.
7 Abbott, she told me that the pact had
8 existed. And then when I was able to
9 corroborate -- or not corroborate, but when
10 I was able to corroborate by Sgt. Stover's
11 testimony about the sexual harassment, that
12 there was truth behind what Sgt. Abbott was
13 telling me about the pact that she had
14 with --

15 JUDGE KELLETT: And that's with
16 regard to an agreement between her and
17 Stacy Stover as to when they would go
18 forward with complaints against Fenton?

19 THE WITNESS: Yes, your Honor.

20 JUDGE KELLETT: Okay. Before we
21 go on, did I give you that little disc that
22 you asked for, the blue disc? I just don't
23 want to misplace something else. The CD --

24 MR. BROUSSEAU: Yes, yes, I've
25 got it and it's keyed up to start now.

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1 JUDGE KELLETT: Oh, good.

2 BY MR. BROUSSEAU:

3 Q. There came a time when Lora Abbott went
4 out of work on disability; is that correct?

5 A. Yes.

6 Q. Did you continue to have communication
7 with Lora Abbott after she went out on disability?

8 A. Yes.

9 Q. How did you continue to communicate with
10 Lora Abbott after she went out on disability?

11 A. We would call on the phone. I have her
12 cell phone -- I have her cell phone number.

13 Q. And did you ever have to meet with her to
14 give her documents that she requested?

15 A. Yes.

16 Q. And what's your recollection regarding
17 that?

18 A. I believe I had to give her a copy of her
19 initial report that she had typewritten and had
20 given me and we had made an arrangement to go to
21 meet at Wal*Mart, at the Wal*Mart parking lot.

22 Q. And why did you meet at the Wal*Mart
23 parking lot?

24 A. She was, I think she said she was going to
25 be there, her and her daughter were going to

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1 Wal*Mart to go shopping or had to pick something up.

2 Q. Was that just one of the reports that she
3 didn't keep her own copy of?

4 A. That's correct, which she was entitled to
5 a copy, and there was no problem with her getting a
6 copy of it.

7 Q. She didn't want to come to the jail to get
8 it; is that correct?

9 A. That's correct.

10 Q. At some point had she made some claims to
11 you about some alleged improper activities on the
12 part of Stacy Stover?

13 A. That's correct.

14 Q. This was during the period of time Miss
15 Stover wasn't cooperating with the investigation?

16 A. That's correct.

17 Q. What claims did she make regarding Stacy
18 Stover?

19 A. That Miss Stover was receiving or had
20 received letters from a former inmate at the jail;
21 improper contact with an inmate.

22 Q. After she made that complaint to you, did
23 you have an obligation to investigate it?

24 A. Yes.

25 Q. Did Lora Abbott tell you that she had some

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1 documentation regarding that?

2 A. She told me that her -- Lora told me that
3 her brother had in his possession letters from this
4 former inmate.

5 Q. When you met at the Wal*Mart parking lot,
6 did she give you copies of those letters for your
7 investigation?

8 A. I believe that's when we exchanged the
9 letters.

10 Q. Okay. Was it a conditional exchange - you
11 would not give her the report unless she gave you
12 the Stacy Stover documents?

13 A. Absolutely not.

14 Q. What happened regarding the claims
15 regarding Stacy Stover?

16 A. With the inmate?

17 Q. Yes.

18 A. There was in the admin. manual, when it
19 was being negotiated, they had gone through great
20 pains to remove a section in there about contact
21 with former inmates.

22 At the time, although I had correspondence
23 from the inmate, there was nothing else that I could
24 prove. There was no other contact that I could
25 prove between her and this inmate, so nothing was

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1 done with it.

2 Q. You had no documentation that she did
3 anything improper, just that the inmate mailed her
4 letters?

5 A. That's correct.

6 Q. Did there come a time where you also did a
7 recorded interview of Michelle Hoffman?

8 A. Yes.

9 Q. And now let's back up regarding Michelle
10 Hoffman. Michelle Hoffman was also involved as
11 someone who was allegedly -- or sexually harassed by
12 Sgt. Fenton; correct?

13 A. That's correct.

14 Q. Do you recall the specifics of the alleged
15 harassment regarding Michelle Hoffman?

16 A. She said that one night on the A line
17 shift that Sgt. Fenton had come in, that she was
18 sitting in a chair with her feet up and I believe
19 she had her shoes off, and that Sgt. Fenton, I
20 believe he made some kind of advance to her.

21 I don't know if he started at her
22 shoulders, rubbing her shoulders or if he took a
23 hair tie out of her hair and started like rubbing
24 his fingers through her hair, or if he asked her if
25 she wanted a foot massage, but it was one of those

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1 things.

2 Q. And during your investigation, did you
3 come to a determination as to whether the actions of
4 Sgt. Fenton with regard to Michelle Hoffman consti-
5 tuted sexual harassment?

6 A. I believe they did, and I interviewed
7 another staff member, Robert Patrick, about it.

8 Q. Did he corroborate Michelle Hoffman's
9 story?

10 A. What he was able to testify to was that
11 she was nervous; she had stated that she did not
12 want to be left alone with Sgt. Fenton anymore.

13 So it wasn't that he was in direct
14 observation of that interaction between the two, but
15 that she didn't want to be around him.

16 Q. And ultimately Sgt. Fenton was charged
17 with sexual harassment with regard to Michelle
18 Hoffman and Stacy Stover and Lora Abbott; correct?

19 A. That's correct.

20 Q. During your investigation, I believe, just
21 so we're clear, you had recorded interviews of
22 Michelle Hoffman, Lora Abbott, and Amber Matthey, who
23 is Lora Abbott's daughter; correct?

24 A. Yes.

25 Q. As well as Robert Patrick and Stacy

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1 Stover; correct?

2 A. That's correct.

3 Q. In addition, Ofc. Webster was conducting
4 the criminal investigation; is that correct?

5 A. That's correct.

6 Q. What ultimately became of the criminal
7 investigation, if you know?

8 A. Ultimately, I think it was no longer
9 pursued, the criminal charges against him. And I
10 believe that occurred when Fenton, through I believe
11 it was a negotiated settlement, that he was to quit;
12 basically resign from his position.

13 Q. And as a result of that, the District
14 Attorney did not pursue the criminal charges?

15 A. I believe that to be correct.

16 MR. BROUSSEAU: Your Honor, can
17 you hand me Exhibit R-13, please?

18 (Discussion off the record.)

19 MR. BROUSSEAU: Oh, I'm sorry,
20 Judge, they're not in evidence yet.

21 (Respondent's Exhibit 13 marked
22 for identification.)

23 BY MR. BROUSSEAU:

24 Q. I'm going to show you, Lt. Karam, what's
25 been marked as Respondent 13 for identification, and

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1 if you can take a look at that and I'll ask you a
2 couple of questions.

3 A. (Witness complies.)

4 MR. BROUSSEAU: I gave you a copy
5 of that, right, Kevin?

6 MR. LUIBRAND: Yes, you did.

7 BY MR. BROUSSEAU:

8 Q. Do you recognize those documents, Lt.
9 Karam?

10 A. It looks to be the Incident Report that
11 Investigator Webster filled out; some narrative
12 supplementals to his investigation and voluntary
13 statements.

14 Q. Is that a true and accurate copy of the
15 criminal investigation records that you provided to
16 me during the course of this case?

17 A. Yes.

18 MR. BROUSSEAU: I would offer
19 Exhibit R-13 into evidence.

20 JUDGE KELLETT: Mr. Luibrand?

21 MR. LUIBRAND: Brief voir dire.

22 - - -

23 VOIR DIRE DIRECT EXAMINATION

24 BY MR. LUIBRAND:

25 Q. Lieutenant, this is the Incident Report

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1 that contains the investigative materials into a
2 possible criminal claim against Sgt. Fenton;
3 correct?

4 A. Yes.

5 Q. Is there anything in here that relates to
6 any criminal investigation or any investigation of
7 retaliation by officers in the department against
8 Miss Abbott -- against Sgt. Abbott?

9 A. No. This is just the criminal investi-
10 gation into Sgt. Fenton.

11 Q. So for the initial sexual assaults of
12 possibly three correctional officers or sergeants;
13 correct?

14 A. Yes.

15 Q. Nothing in regards to retaliation?

16 A. No -- well, I don't know without reading
17 the actual statements what was claimed in these
18 statements. I did look at them at one point in
19 time, but to comment on their content at this point,
20 I don't know exactly what is written in here that
21 any one of these individuals would have said to the
22 investigator about retaliation.

23 - - -

24 VOIR DIRE CROSS-EXAMINATION

25 BY MR. BROUSSEAU:

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1 Q. Let me stipulate that Sgt. Webster was
2 assigned to do, in fact, a criminal investigation
3 regarding the underlying sexual harassment of the
4 three female employees in the Rensselaer County
5 Sheriff's Department; correct?

6 A. Yes.

7 Q. You did not at any time task him to
8 investigate anyone at the Sheriff's Department for
9 any criminal charges relating to any retaliation?

10 A. No, I have not.

11 MR. LUIBRAND: No objection to
12 the document as described.

13 JUDGE KELLETT: It is received.
14 Thank you.

15 (Whereupon, Respondent's Exhibit
16 13 was received into evidence.)

17 - - -

18 DIRECT EXAMINATION

19 CONTINUED BY MR. BROUSSEAU:

20 Q. Lt. Karam, now that we're discussing the
21 retaliation issues, after your investigation had
22 commenced, did there come a time when Lora Abbott
23 made some complaints regarding actions of other
24 corrections officers regarding her and other staff
25 members of the Rensselaer County Sheriff's Depart-

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1 ment?

2 A. Yes.

3 Q. What's the first complaint you recall from
4 Lora Abbott regarding actions of other officers?

5 A. The first complaint that I recall was one
6 that was shared with me by Capt. Smith about, I
7 think it was a report that was done sometime around
8 June 21st, that staff members were retaliating
9 against, I believe, Sgt. Abbott and Michelle
10 Hoffman, CO Hoffman.

11 Q. And in what way were you told that staff
12 members were retaliating against Michelle Hoffman
13 and Lora Abbott?

14 A. It was a report filed by, I believe,
15 Sgt. Abbott.

16 Q. And what type of harassment did she
17 describe?

18 A. I would have to actually see the report
19 again to read it, to go through it.

20 MR. BROUSSEAU: I would like to
21 hand the witness Exhibit R-9, please.

22 THE WITNESS: If I could, I
23 believe that report was on the 19th. It
24 was June 19th.

25 JUDGE KELLETT: I'm passing what

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1 is already in evidence as Respondent
2 Exhibit 9 to the witness.

3 THE WITNESS: Thank you.

4 MR. BROUSSEAU: And since it goes
5 hand in hand, Judge, can you hand the
6 witness Exhibit R-10, please?

7 JUDGE KELLETT: Certainly.

8 (Respondent's Exhibits R-9 and
9 R-10 marked previously for identification
10 and received into evidence.)

11 THE WITNESS: Thank you.

12 BY MR. BROUSSEAU:

13 Q. Does that refresh your recollection?

14 A. Yes.

15 Q. Now, what do you remember about the first
16 complaint of retaliation that you heard on or about
17 June 21, 2010?

18 A. I remember having a discussion with Capt.
19 Smith, he brought this to my attention, and I said
20 -- I told him that the staff members don't under-
21 stand because the sexual harassment complaint was
22 not widely known to a lot of people, and that they
23 all thought it was over -- they thought -- the
24 majority of this was over Sgt. Abbott's filing a
25 complaint and writing reports on Sgt. Fenton

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1 sleeping.

2 Q. And that was the report that was done
3 about a month before she came forward about the
4 sexual harassment?

5 A. That's correct.

6 JUDGE KELLETT: Is it any better
7 or worse that these actions are going on
8 because they thought he had been reported
9 for sleeping versus he had been reported
10 for sexual harassment?

11 THE WITNESS: What I can recall
12 from the time was that staff members felt
13 that it was unfair that Sgt. Fenton had
14 been reported for sleeping on the job.

15 The problem with sleeping on the
16 job is in our county work rules, which were
17 in the admin. manual, you can literally do
18 it four times before anything happens to
19 you.

20 So historically in the jail where
21 people were allowed to sleep, I think it
22 was overlooked by supervisors. I think
23 that it was allowed to happen. And when a
24 complaint came forward, it made a lot of
25 staff members angry because it was like an

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1 accepted practice that, you know, super-
2 visors did it on the shift and COs did it
3 on the shift, and to have a sergeant
4 complain about another sergeant infuriated
5 a lot of people; made them angry about it.

6 Some of the staff members
7 actually brought in timers so that they
8 would be reminded or woken up every half an
9 hour to go do a punch. That's where a lot
10 of this resentment was coming from.

11 And I believe that, you know, if
12 there were actions that were taking place,
13 it was because of that, and that they
14 didn't know, because a lot of people didn't
15 know about the sexual harassment complaint.

16 JUDGE KELLETT: But would it have
17 been appropriate to have been taking that
18 action because of making rat noises or any
19 of the other things we heard about because
20 the sleeping was reported?

21 I'm just trying to ascertain,
22 wouldn't you have to take action?

23 THE WITNESS: It wouldn't have --
24 when I looked through this report quickly,
25 a lot of the allegations were nameless and

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1 faceless. It wasn't specific to this
2 person did this, that person did that.

3 You know, there was some stuff in
4 here about certain sergeants being short
5 and not giving, you know, I wouldn't say
6 not giving the information that they needed
7 in their conduct, but if you go through and
8 look at it, it just doesn't really focus
9 down on the specifics that can be followed
10 up.

11 My main focus was to focus on the
12 sexual harassment complaint and not to drop
13 that to pick this up to try and figure out
14 who may have -- you know, who, because no
15 one was specifically listed as this person
16 made a rat noise, this person swore at me,
17 this person -- it just wasn't there.

18 So I had asked Capt. Smith if he
19 would pull some people in and to put them
20 on notice about their conduct because they
21 didn't know the bigger picture of what was
22 going on; and, again, they were all coming
23 to Sgt. Fenton's defense at that time
24 without knowing about the sexual harass-
25 ment.

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1 JUDGE KELLETT: And the defense
2 was of sleeping on the job?

3 THE WITNESS: Yes.

4 BY MR. BROUSSEAU:

5 Q. Lt. Karam, if say, hypothetically, if that
6 was the only charge pending against Sgt. Fenton and
7 there were no sexual harassment, is calling someone
8 a rat and making rat noises or calling somebody
9 names under their breath because they've disciplined
10 somebody for sleeping, is that acceptable behavior
11 at the Rensselaer County Sheriff's Department? I
12 think that's what the judge was asking.

13 A. No, it's not acceptable behavior.

14 When it's a documented incident and if it
15 can be corroborated, then we do our best to address
16 that issue. There are some issues that, you know,
17 in the course of this whole investigation where when
18 things were brought to light, they were taken care
19 of.

20 The sexual harassment complaint against
21 Sgt. Fenton is one. When that was documented and we
22 had something to go on, we suspended him immediate-
23 ly. We went after him and took care of it immedi-
24 ately.

25 Sgt. Abbott brought up some other

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1 incidents, like Sgt. Connell placing Ofc. Caulfield
2 on a different housing assignment. He was disci-
3 plined for that.

4 Even Sgt. Fenton for sleeping, Sgt. Abbott
5 had the courage to come forward and to write him up
6 for doing that. Disciplined.

7 So we've taken steps as we had stuff that
8 we can actually do something about.

9 Q. Did Capt. Smith tell you that he spoke to
10 some individuals regarding that complaint of Lora
11 Abbott?

12 A. That's correct. I actually talked to him
13 about it and I talked to the undersheriff about
14 putting people on notice.

15 Q. Did you have a notation in your file that
16 Capt. Smith told you that he spoke to people?

17 A. That's correct.

18 Q. All right.

19 A. I also, I believe, had a conversation with
20 Sgt. Abbott about this report and that people had
21 been put on notice. I had told her that steps were
22 taken.

23 (Respondent's Exhibit 11 marked
24 for identification.)

25 BY MR. BROUSSEAU:

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1 Q. I'm going to show you what's been marked
2 as Respondent Exhibit 11 for identification. That's
3 your handwriting; is that correct?

4 A. Yes.

5 Q. And do you recognize what that document
6 is?

7 A. It appears to be a note that I wrote on
8 the inside of one of my investigative folders.

9 Q. And what's the date of that?

10 A. 6/21/2010.

11 Q. Did does that mean you wrote it on
12 6/21/2010?

13 A. Yes.

14 Q. Is that your handwriting?

15 A. Yes.

16 MR. BROUSSEAU: I would like to
17 offer Exhibit R-11 into evidence.

18 JUDGE KELLETT: Counsel?

19 MR. LUIBRAND: Brief voir dire.

20 - - -

21 VOIR DIRE DIRECT EXAMINATION

22 BY MR. LUIBRAND:

23 Q. This handwritten note is dated 6/21/10; am
24 I correct?

25 A. Correct.

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1 Q. And had Capt. Smith informed you for what
2 length of time and what the contact was of the
3 claims of harassment that Sgt. Abbott had been
4 reporting to him?

5 A. No.

6 Q. Did you ask him?

7 A. No. I was just dealing with this report
8 that had come to me.

9 Q. So your role was not at any point in time
10 to either investigate or take any steps with respect
11 to retaliation against Sgt. Abbott; correct?

12 A. I'm sorry, can you repeat that question?

13 Q. Your role, your role, in so far as it
14 relates to having to do with Sgt. Abbott, never
15 extended to taking steps against anyone allegedly
16 involved in retaliating against her; is that
17 correct?

18 A. That's not correct.

19 Q. I thought you just said that?

20 A. I just said what?

21 Q. What steps did you take with respect to
22 the people identified in this note - Connell, Piche,
23 Hayes, Higgitt and Case - with respect to what Capt.
24 Smith had reported to you about retaliation against
25 Sgt. Abbott? What steps did you take?

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1 A. When this report came to my attention, I
2 had conversation with Capt. Smith and with the
3 undersheriff that people needed to be put on notice
4 because they didn't understand what the true
5 complaint was behind this.

6 Again, the assumption was by staff that it
7 was just the sleeping issue, which was perceived as
8 unfair, but that wasn't the case. So I had asked
9 Capt. Smith if he would do this and put people on
10 notice.

11 So you're asking me whether or not I was
12 involved in it. I was involved in it by telling him
13 this is what needs to happen. And Capt. Smith was
14 aware of the sexual harassment investigation going
15 on.

16 These complaints about this harassment,
17 this was the first step of corrective action, which
18 should have been taken at the captain's level, and I
19 was basically helping him with that saying you need
20 to do something about this and put these people on
21 notice. So, yes, I was involved in it.

22 And then the other thing was Caulfield.
23 Abbott had brought up the fact that Caulfield being
24 moved off a housing unit because of a perceived
25 connection between Ofc. Caulfield and Sgt. Abbott

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1 and she complained about that and we looked into it.

2 The reason that was given for the movement
3 or reassignment was so that a female didn't have to
4 work on a housing unit where the inmates were. That
5 was the reason that was given to the captain.

6 But the rule, the standing rule was if
7 somebody is on an ownership, they stay under
8 ownership and you don't bump them. So Sgt. Connell
9 did get disciplined for moving Ofc. Caulfield when
10 he shouldn't.

11 So I do have, I do have a direct influence
12 on what happens in regards to complaints about
13 retaliation and we did take steps and I did take
14 steps with Capt. Smith to correct some of these
15 allegations of harassment.

16 Q. I don't want to get too far afield because
17 it's only with respect to this document, but this
18 document says that you were given reports by Capt.
19 Smith. Are those written or oral reports?

20 A. This report right here?

21 Q. The document, which has just been marked
22 as an exhibit, says that you were given reports by
23 Capt. Smith. Do you see that?

24 JUDGE KELLETT: We're talking
25 about 11.

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1 THE WITNESS: Oh, reports plural.
2 There may have been other reports along
3 with this, with regard to the --

4 MR. LUIBRAND: When you use this
5 and that, that doesn't help us at all.

6 MR. BROUSSEAU: What exhibit are
7 you referring to?

8 THE WITNESS: I'm sorry, this
9 exhibit is exhibit -- I don't know how to
10 read this.

11 JUDGE KELLETT: That's 9.

12 THE WITNESS: This is Exhibit 9,
13 but this note right here --

14 MR. BROUSSEAU: R-11.

15 THE WITNESS: R-11, Mr. Luibrand,
16 that word says "given reports" would have
17 been this report and I believe, but I'm not
18 100 percent sure, other reports as related
19 to the sexual harassment complaint.

20 BY MR. LUIBRAND:

21 Q. And those were given to you by Capt. Smith
22 on June the 21st?

23 A. I believe so.

24 Q. When you say reports with an "s", do you
25 mean written reports or could it cover oral reports?

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1 A. It could have covered oral reports, too,
2 but if I wrote -- if I wrote "given reports," I mean
3 written reports, but I did talk to Capt. Smith about
4 what had happened in this report itself.

5 Q. And then the next sentence says, "Captain
6 advises me he talked to staff involved"; correct?

7 A. That's correct.

8 Q. So it doesn't say you told him to talk to
9 staff. He told you that he had spoken to staff?

10 A. He told me he had, but I was the one that,
11 when I got this report and read it, I called him and
12 said that we needed to do something about this
13 harassment and this report.

14 I called the undersheriff and I told the
15 undersheriff what my concerns were and he said to
16 have Capt. Smith bring the people in and talk to the
17 people. I called Capt. Smith and talked to him and
18 that's why this reads the way it does.

19 Q. But in this, it doesn't say you told him,
20 it says he told you.

21 A. Because there were staff that he was going
22 to talk to and I believe there was staff that he
23 didn't get around to talking to, you know, that day,
24 that he had to wait for them coming back in.

25 Q. And you used the phrase, "I told him to

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1 put the people on notice." What does that mean "on
2 notice"?

3 A. On notice in my mind means that they have
4 to stop doing their high school, childish garbage
5 that happens in the work place.

6 Q. Is that what you concluded the activities
7 towards Miss Abbott were?

8 A. With no specifics that I could follow up
9 on, and again with my focus being on the sexual
10 harassment complaint, that's what I concluded with
11 this. And, again, because their misunderstanding of
12 staff was this was all about sleeping and it was
13 much more serious than that.

14 I was under a time line and a dead line
15 also to ensure that charges were preferred as soon
16 as possible against Sgt. Fenton for his actions. So
17 it was pretty serious, and my notes, the folder I
18 have on the sexual harassment complaint, show a lot
19 of activity when the complaint first came in.

20 MR. LUIBRAND: Judge, I have no
21 objection to R-11 being received.

22 JUDGE KELLETT: Okay, 11
23 received.

24 (Whereupon, Respondent's 11
25 received into evidence.)

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DIRECT EXAMINATION

CONTINUED BY MR. BROUSSEAU:

Q. Can you just read it for the record, since it's in your handwriting?

A. "Given records by Capt. Smith. Captain advises me he talked to staff involved - Connell, Piche, Hayes, Higgitt. Higgitt off as of this date. Case will be talked to as well. Stover will be addressed as well by Capt. Smith."

Q. In that complaint, Lora Abbott in R-9, Lora Abbott makes complaints against Stacy Stover as well?

A. Unless I read it word for word, I'm not 100 percent sure if she's actually in R-9.

Q. R-10 is the complaint you received from Michelle Hoffman; correct?

A. Yes.

Q. Now, does Michelle Hoffman make some specific allegations regarding the specific sergeant?

A. Yes, she says that conversation had been occurring with Sgt. Piche and some unknown people, and that she wasn't paying attention to the conversation, but that as she was walking towards him, he said, "I better not say -- I better not say it. I

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1 wouldn't want to be brought up on charges." And
2 then she goes on to say she felt as though the
3 comment was -- she's got "directly to me."

4 Q. Was that one of the two reports you
5 received from Capt. Smith on or about June 21, 2010?

6 A. It could have been one of the reports.
7 It's dated that he reviewed it on the 21st.

8 Q. What did she do in response to Michelle
9 Hoffman's complaint?

10 A. I interviewed Miss Hoffman in my office.
11 I asked her to come down. It wasn't recorded, but I
12 talked to her about the incident that had happened
13 and if she knew any part of the conversation and
14 what the conversation was about, and she said that
15 she couldn't.

16 I had told her that I was going to talk to
17 Sgt. Piche about his conversation and who he was
18 talking to and what he was talking about.

19 And I said, "Are you sure that it was
20 about you?" I said, "Do you know for a 100 percent
21 certainty that that conversation was about you?"
22 And she said, "No, I can't.

23 So I said there's not really a lot I can
24 do about this other than to ask Sgt. Piche about
25 what he was talking about. But then she goes on to

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1 say, "Many under breath comments," and I believe
2 it's condescendingly negative -- "condescending
3 remarks are made by other officers towards me and
4 Sgt. Abbott, on occasions making it uncomfortable to
5 have to work in the jail. Sergeants have become,"
6 it looks like "unapproachable as well."

7 With that, there was no - it was this
8 officer; this date; it was this time; this is what
9 they said to me. It was a generalized statement.

10 The same things with sergeants becoming
11 unapproachable - no sergeant; no specific incident;
12 no specific request to a sergeant. A generalized
13 statement. Nothing I could go on.

14 Q. When you brought her in for her interview,
15 did she give you any more specifics?

16 A. No, no. And she was doubting, she was
17 doubting herself and whether or not anything truly
18 occurred, other than eye contact being made during
19 that statement.

20 Q. What did you do with regard to Sgt. Piche
21 at that time?

22 A. I called Sgt. Piche in and I asked him
23 about his conversation, and Sgt. Piche had said that
24 he had been writing a lot of reports -- he couldn't
25 remember the actual conversation he was having,

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1 except for the fact that he had been writing a lot
2 of reports lately and he was getting sick and tired
3 of being dragged into what he considered other
4 peoples messes.

5 Q. By writing reports, you mean writing
6 reports on other corrections officers that he might
7 have supervised?

8 A. That's correct.

9 Q. He didn't submit any written reports
10 regarding Sgt. Fenton's sexual harassment charges;
11 did he?

12 A. No.

13 Q. That's a good point to go off on and
14 explore Sgt. Piche a little bit.

15 Sgt. Piche, what is his current employment
16 status with the Rensselaer County Sheriff's Depart-
17 ment?

18 A. Suspended.

19 Q. What is he suspended for?

20 A. He's suspended for -- it was if -- it's a
21 total of three incidents. One he had just received
22 a written warning because he had written something
23 on a bulletin board, a remark directed toward the
24 master sergeant and he had received a write-up for
25 that.

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1 When he had left, he had actually pulled
2 up in front of the jail in his truck. It was
3 raining out and he rolled his window down and he
4 gave the middle finger to, it was either me or it
5 was the first sergeant or it was both of us.

6 Q. And that resulted in pretty immediate
7 discipline?

8 A. It was that incident, and then there was
9 at roll call he had -- somebody had given informa-
10 tion out at roll call about a directive that
11 sergeant -- or that Lt. Hetman had and he swore at
12 roll call and that he said...

13 THE WITNESS: Is it alright for
14 me to swear?

15 JUDGE KELLETT: Yes.

16 A. He said, "Fuck Lt. Hetman; fuck Lt.
17 Hetman; fuck Lt. Hetman," and he stormed out of the
18 roll call.

19 The one incident he had been written up
20 and served; and then the second incident where he,
21 you know, flipped us off with his middle finger; and
22 then the roll call incident. It was all kind of
23 combined into a disciplinary report against him and
24 then he was suspended for that.

25 Q. Okay. Did you have any hesitation in

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1 disciplining him for these matters?

2 A. Negative. No hesitation at all.

3 Q. And going back, there's been some testi-
4 mony -- Sgt. Sinnott has given testimony in this
5 case regarding some prior problems he had with Sgt.
6 Piche years back.

7 Were you involved in the issues between
8 Sgt. Sinnott and Sgt. Piche?

9 A. Yes, there were complaints made by Sgt.
10 Sinnott about Sgt. Piche making a comment to an
11 inmate services assistant, I think her title is.
12 Her name is Kristin Wing.

13 After we interviewed Miss Wing and other
14 staff members that were involved, it was apparent
15 that Sgt. Sinnott had taken the interaction between
16 Sgt. Piche, Ofc. Kosowsky and Kristin Wing out of
17 context and wrote a report alleging that Sgt. Piche
18 was being difficult.

19 When Kristine Wing was being interviewed
20 she said it was all over getting an inmate list
21 printed from booking and Sgt. Piche said not to ask
22 a certain individual and that they would take care
23 of it because that individual would get written up,
24 or something about that. And they kind of laughed
25 about it, and then Sgt. Sinnott wrote a report on it

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1 alleging improper conduct on the part of Sgt. Piche.

2 Q. Did Sgt. Piche make some complaints
3 regarding Sgt. Sinnott as well during this time
4 period?

5 A. Sgt. Piche made a complaint about Sgt.
6 Sinnott not reporting to a code on time.

7 Q. What is a code? Can you explain?

8 A. When we would have a code in the facility,
9 it's like an emergency situation and they go by --
10 we have them called out by number. Like a code one
11 would be inmate assault on an officer; code two
12 would be inmates fighting; code three is refusing a
13 look-in of an inmate; and code four is a medical
14 emergency.

15 So Sgt. Piche made a claim that Sgt.
16 Sinnott was not responding to codes and wrote a
17 report against Sgt. Sinnott.

18 Q. And in response, what happened next
19 between Sgt. Sinnott and Sgt. Piche?

20 A. There were a couple of more incidents
21 where Sgt. Piche and Sgt. Sinnott had interaction.
22 One where Sgt. Sinnott had written reports and had
23 complained about Sgt. Piche's behavior. There were
24 several reports that were submitted to the super-
25 intendent and all those reports were lost. They

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1 were from probably three, I think they were from
2 three different officers.

3 Q. By the superintendent, you're referring to
4 Colonel --

5 A. Col. Robert Leverage (phonetic).

6 Q. Were you able to, when you were investi-
7 gating complaints, were you able to reassemble the
8 complaints from copies from Sgt. Sinnott and others?

9 A. Yep. About three months later I was
10 tasked with -- because the issue of Sgt. Piche's
11 interaction wasn't being addressed, and then three
12 months later the Sheriff tasked me with trying to
13 find out what had gone on with these complaints.

14 So we were able to get copies, unsigned
15 copies of the report from Sgt. Sinnott; we were able
16 to get a copy of the report from -- it wasn't a
17 complete copy, it was only the back page of a report
18 from Patty Sawyer; and then the other one was a
19 report from Tammy Thomas.

20 Q. Patty Sawyer, that was an officer at the
21 jail and she was the one who complained that, if I
22 recall correctly, that Sgt. Piche was making
23 Scooby-Doo noises whenever she walked into the room?

24 A. That's correct.

25 Q. And so you investigated all these matters

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1 regarding Sgt. Piche and Sgt. Piche's complaint
2 against Sgt. Sinnott.

3 What was the result of your investigation
4 into Sgt. Piche's complaints against Sgt. Sinnott?

5 A. My investigation with regards to Sgt.
6 Piche -- First, if I can back up.

7 The complaint with -- or the reports that
8 were written by Sgt. Sinnott against Sgt. Piche,
9 when I interviewed Kristin Wing, she said that no
10 one was trying to cause trouble for her; no one was
11 harassing her; and they were laughing about the
12 comment that was made about someone getting in
13 trouble about printing out a report.

14 That's to the best of my recollection, but
15 she was not a complainant and she said no one was
16 doing anything wrong to her.

17 The report, or the complaint from Piche
18 about Sgt. Sinnott, we actually reviewed -- Piche
19 had run down the hall to go to the code and Ofc.
20 Radliffe was in the control room. He had waved
21 Sgt. Piche to come in.

22 Ofc. Radliffe wanted help with opening the
23 doors and he asked Sgt. Piche to come in and help
24 him, and so they actually came in. They were
25 opening the doors and responding -- getting staff

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1 members to respond down to the code.

2 I pulled the videos of Sgt. Sinnott, and
3 Sgt. Sinnott was hung up at a gate, which happens
4 from time to time when you report to codes, that you
5 don't, unless you're actually on the radio telling
6 people, directing them to come back to open up a
7 certain gate, you can get hung up at a code as they
8 are allowing other staff members to go in there.

9 So Sgt. Sinnott stood there and he pressed
10 the button and pressed the button again, but never
11 got on the radio to say, Control, open up gate
12 whatever, and I've got that in a file.

13 So it's not that he wasn't trying to get
14 there, he was trying to get there, and so Sgt.
15 Piche's complaint against him was unfounded. But
16 again, he wasn't taking the steps necessary to get
17 on the radio to get himself down to the code.

18 And that was a complaint that a lot of
19 staff members were making about Sgt. Sinnott just
20 not responding to the codes at the jail.

21 Q. But he wasn't disciplined as a result of
22 Sgt. Piche?

23 A. Negative. Nobody was.

24 Q. What was the result of your investigation
25 into the Patty Sawyer issue?

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1 A. By the time, and it was three months later
2 I think, that the investigation, so to speak...

3 THE WITNESS: I'm sorry, your
4 Honor, did you want to say --

5 JUDGE KELLETT: I was just
6 wondering, how does this relate to our
7 case?

8 MR. BROUSSEAU: It only relates
9 to our case, your Honor, to the extent that
10 Sgt. Sinnott's testimony was trying to
11 paint the administration as nonresponsive
12 to complaints regarding Sgt. Piche alleging
13 that complaints regarding Sgt. Piche were
14 lost and no actions taken. We don't have
15 to go into the minute details of the Sawyer
16 matter, but --

17 JUDGE KELLETT: I would prefer
18 hearing a time frame delineated. I'm not
19 exactly sure how --

20 MR. BROUSSEAU: Well, the
21 approximate time frame is well before --

22 THE WITNESS: They all came in in
23 one big bunch. I can't give you the exact
24 date of Ofc. Sawyer's complaint because the
25 front page of the complaint wasn't copied.

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1 (Court reporting machine
2 disconnected.)

3 JUDGE KELLETT: Well, we'll take
4 a break then.

5 BY MR. BROUSSEAU:

6 Q. Where we left off, Lt. Karam, you were
7 talking about an incident regarding Sgt. Piche and I
8 believe we were talking about Patty Sawyer.

9 Just so the record is clear, would you
10 clarify -- I know you said that you cannot tell the
11 exact dates of these complaints, but can you give us
12 the general time period? What year the complaints
13 were from?

14 A. You know, unless I pull the actual, unless
15 I pull the actual file that had the reports in it
16 and all that stuff, off the top of my head --

17 Q. It was prior to --

18 A. -- I can't.

19 Q. -- the matter with regard to Sgt. Fenton
20 though; correct?

21 A. I believe that to be true.

22 Q. What happened when you investigated the,
23 just briefly, when you investigated the Patty Sawyer
24 matter?

25 A. By the time I had gotten around to getting

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1 the reports from everybody -- I actually drove out
2 to the Sawyer's residence -- they live in Nassau --
3 and she had a copy of it, but she never copied the
4 front of the page with the date and the time and if
5 it had been reviewed by the captain. It was just
6 the back part of it.

7 By the time that I had gotten that stuff,
8 her husband, Tom Sawyer, who works for the Sheriff's
9 Office as a transport officer, had discussed the
10 matter with Mark and --

11 Q. Mark is?

12 A. Mark Piche. And Mark had said -- and I
13 believe he wrote a report on it -- that he was not
14 trying to harass her and he considered them friends,
15 and the whole issue between them had resolved.

16 Patty, I believe, was pregnant at the time
17 and in Tommy's discussion, Tommy Sawyer's discussion
18 with Mark Piche, he attributed that her sensitivity
19 to that stuff to her being pregnant.

20 Q. Did Mark Piche know that she was pregnant?

21 A. Maybe. I'm not 100 percent sure. I don't
22 know.

23 Q. And then with regard to the complaints
24 that Sgt. Sinnott made regarding Sgt. Piche's
25 behavior --

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1 JUDGE KELLETT: I just want to go
2 back to that. There is an assumption in
3 the Sheriff's Office that pregnant women
4 are more sensitive?

5 THE WITNESS: That's not my
6 assumption, ma'am. I'm just telling you
7 what the two individual's talked about.

8 JUDGE KELLETT: So you think
9 Sgt. Piche had that assumption?

10 THE WITNESS: No, I think Tom
11 Sawyer, Patty's husband, had that assump-
12 tion about why she was upset and made an
13 issue out of it because they had all been
14 friends.

15 JUDGE KELLETT: Okay, thank you.

16 BY MR. BROUSSEAU:

17 Q. And finally with regard to Sgt. Sinnott's
18 complaints regarding Sgt. Piche, you investigated
19 those complaints as well?

20 A. Those reports were reports that were --
21 there was an incident that happened in front of
22 visitation and there was another incident that
23 happened at roll call.

24 The three people that were listed as
25 witnesses, from what I understand, no one heard or

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1 saw Sgt. Piche swear or yell at Sgt. Sinnott.

2 I think it was Mike Patrick was one guy,
3 maybe Nick Dillenbeck I think was the next guy, and
4 the captain, Capt. Smith, whose office was right
5 around the corner, reported not hearing anything;
6 not being in the room and not hearing any part of
7 this.

8 When the issue of the missing reports came
9 up and it was pressed as to the Colonel's actions,
10 the Colonel ended up telling the Sheriff that he
11 had, in fact, talked to Mark Piche about it and had
12 told Mark Piche that he needs to watch the way he
13 talks to other people and how he addresses other
14 people.

15 And from that day forward there were no
16 further complaints from Sgt. Sinnott about Sgt.
17 Piche.

18 So from what the Colonel was saying, he
19 had addressed Sgt. Piche about that behavior and
20 about the incidents that he had with Sgt. Sinnott.

21 Q. So Sgt. Piche was given a verbal warning
22 from the Colonel?

23 A. According to the Colonel.

24 And then the last thing we had talked
25 about was Ofc. Thomas and that was to staff members

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1 calling each other, teasing each other on the phone,
2 hanging up on each other, and Sgt. Piche actually
3 called Ofc. Thomas and she hung up on him thinking
4 it was Ofc. Bruno. That was the issue with that
5 whole thing.

6 Q. Also during his testimony here before the
7 Division, Sgt. Sinnott had made some statements that
8 he believes that it was possible he was moved to the
9 A line shift and he thought it was possible it was
10 as a result of some testimony he gave during the
11 Division's investigatory conference that took place
12 in May of 2011, and I told you after that testimony
13 to look into it to ensure that there was no indica-
14 tion that any retaliation was occurring; is that
15 correct?

16 A. That's correct.

17 Q. What did your investigation tell you?

18 A. That accusation is incorrect and --

19 Q. Why?

20 A. I was part of the process of selecting
21 staff members to become certified as instructors in
22 the jail. Sgt. Sinnott had said that he was
23 interested in becoming an instructor.

24 We had -- we recently had gone through an
25 expansion at the jail. We expanded the facility,

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1 and with that expansion, there's new floors that
2 they've put in. We used to have seamless floors
3 that were, not maintenance free, but all you had to
4 do was mop them, and we've since gone to the tile
5 type floors that I believe are just outside this
6 doorway and they have to be maintained.

7 Sgt. Sinnott said that he had experience
8 maintaining floors in I believe it was Crossgates or
9 at some facility. He had expressed an interest in
10 wanting to take over being the sergeant in charge of
11 maintaining the floors.

12 The discussions that we had had were that
13 the floors were going to be done on the midnight
14 shift because there's less traffic on that shift.

15 And, in fact, prior to Sgt. Sinnott's
16 testimony, he actually was on the midnight shift and
17 was paid overtime for doing the floor detail on the
18 midnight shift.

19 We had paid -- just in training in over-
20 time -- well, it was a combination of training and
21 actually doing the floor detail, over \$9,000 to Sgt.
22 Sinnott.

23 The purpose of the floor maintenance
24 program was that it was to be done on the midnight
25 shift and it was to be done when Sgt. Sinnott was on

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1 the shift, so that we didn't have to pay that over-
2 time anymore. It's an exorbitant amount to have to
3 pay somebody, especially when the floors are not
4 being maintained properly and they are not staying
5 clean. We can't have people walking on polished and
6 waxed floors during the day shift. So he knew and
7 that was before he actually testified.

8 So the answer is no, it wasn't in
9 retaliation. It was always the plan that that was
10 what was going to happen.

11 Q. Going back to the alleged retaliation that
12 took place regarding Michelle Hoffman and Lora
13 Abbott after Lora made the sexual harassment
14 complaint, I believe you already testified with
15 regard to an event regarding the placement of
16 Michelle Hoffman on a tier and Sgt. Abbott alleged
17 that she was placed in an improper position as a
18 result of making the sexual harassment complaint?

19 A. That's correct.

20 Q. What was your involvement in that?

21 A. The morning that that all, that that all
22 took place, I received a phone call from Capt. Smith
23 saying that Sgt. Abbott was in his office and that
24 she wanted to talk to me.

25 Q. Can you specify the date?

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1 A. Just give me one minute, please. (Pause.)
2 I believe it was the 25th.

3 Q. Was that also Lora Abbott's last day on
4 the job?

5 A. I believe so, the 25th or the 26th.

6 Q. So what was your involvement in this
7 matter?

8 A. Sgt. Abbott came out to my office to
9 report to me that she had discovered that Michelle
10 Hoffman was placed on one of the larger housing
11 units. She felt that it was unfair and she believed
12 that it was in retaliation. She tried to talk to
13 the captain about it. And she felt that the captain
14 was not handling the situation properly.

15 I ended up making -- well, I ended up
16 calling the captain and telling him that he needed
17 to take Ofc. Hoffman off of that housing unit and to
18 place her on a different housing unit that had only
19 three inmates on it.

20 Lora was quite upset at the time. I told
21 her that I needed her to document stuff and to get
22 her report to me as to what was going on. I can't
23 remember a lot of the conversation, but she was
24 upset. She was crying.

25 I told her that I would take care of it

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1 and she said that she didn't want to deal with the
2 captain anymore, and I said, "You can deal directly
3 with me on these issues," and we pretty much kept it
4 that way and dealt with just each other from that
5 point in time.

6 Q. Did you investigate the issue of Michelle
7 Hoffman's placement?

8 A. Yes, I did.

9 Q. What did you do to investigate that?

10 A. Well, we took a look at the paperwork. I
11 had the captain move her. The supervisors had the
12 right to leave her right there. She could have
13 stayed there for the next eight hours.

14 There's nothing that dictates that when
15 somebody is on 16 hours that you move them to one
16 housing unit or another based on how many inmates
17 are on housing unit, but the perception was that it
18 was unfair and it was upsetting to Sgt. Abbott and I
19 agreed with that, and that's when I said to Capt.
20 Smith we need to move her.

21 Sgt. Abbott had also said that she had
22 walked into the watch commander's office and she
23 believed that they were laughing about the placement
24 of Ofc. Hoffman on that housing unit and whether or
25 not Sgt. Abbott had picked up on it.

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1 Q. Did you speak to anyone regarding the
2 matter?

3 A. I talked to Sgt. Roy about it, and
4 received a report from Sgt. Roy. He said that they
5 did discuss whether or not Sgt. Abbott had picked up
6 on the fact that Hoffman was placed on that housing
7 unit.

8 Q. Who was "they"?

9 A. It was the other sergeant, some other
10 people that were in the office.

11 Q. All right. Who were the other sergeants
12 who were in the office?

13 A. I think Higgitt was in there, Sgt. Higgitt
14 was in there. I think Ofc. Kosowsky was in there.
15 Sgt. Roy was there. Connell, I believe, may have
16 been in there.

17 Q. And who had made up that duty roster that
18 placed Michelle Hoffman where she was initially
19 placed?

20 A. Sgt. Connell did.

21 Q. Had Sgt. Connell just been written up for
22 the way he placed Gary Caulfield?

23 A. Yes -- well, no, no.

24 Q. He hadn't been written up, but there had
25 been a complaint written up against him at that

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1 time; correct?

2 A. I believe that he was aware of -- I
3 believe that he was aware of that fact.

4 JUDGE KELLETT: He was aware of
5 what fact?

6 THE WITNESS: That his placement
7 of staff members was being looked into.

8 BY MR. BROUSSEAU:

9 Q. Did you review some video of the watch
10 commander's office from that day?

11 A. Yes, I did.

12 Q. I have the watch commander's -- Do certain
13 portion of the Rensselaer County jail have video
14 surveillance cameras in them?

15 A. Yes.

16 Q. Not all areas of the jail are under video
17 surveillance at the time?

18 A. Not all of them.

19 Q. And is there audio associated with the
20 video surveillance?

21 A. No.

22 Q. And you've given me a copy of the video
23 surveillance from the watch commander's office; is
24 that correct?

25 A. That's correct.

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1 MR. BROUSSEAU: Do you want to
2 take a look at it, Judge? I guess the way
3 we're configured now, we'll have to bring
4 it up here.

5 JUDGE KELLETT: Does he have to
6 see it?

7 MR. BROUSSEAU: It is good for
8 him to describe who the parties are.

9 JUDGE KELLETT: Why don't you
10 leave it on that desk and that way...

11 (Discussion off the record.)

12 JUDGE KELLETT: Please get on
13 the record that we're moving to see the
14 computer screen to see a video.

15 (Commencement of video.)

16 BY MR. BROUSSEAU:

17 Q. Now, this is starting at -- the date on it
18 is 6/25/2008 and start time we got keyed up to is
19 6:41 a.m., 42 seconds; is that correct?

20 A. Yep.

21 Q. Who is shown in this video, or this still?

22 A. It looks like Sgt. Abbott, top of Sgt.
23 Abbott's head; and it looks like Sgt. Bates, Michael
24 Bates.

25 Q. Is this the watch commander's office?

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1 A. Yes.

2 Q. Could that be Sgt. Roy?

3 A. At the time -- No, it's not Sgt. Roy. At
4 the time that was the watch commander's office.
5 It's now inmate services office.

6 Q. I'm going to start hitting play. At 6:41
7 a.m., this would be just before change of shift;
8 correct?

9 A. Change of shift, correct.

10 Q. And A line would be shortly switching over
11 to B line; is that right?

12 A. In a little while, yes. Roll call is at
13 quarter after.

14 Q. I'm going to try and fast forward to
15 around roll call time. (Pause.)

16 Who is that in the frame now at 6:50:26?

17 A. That looks like Sgt. Roy.

18 MR. BROUSSEAU: I'm sorry, Judge,
19 but this is as fast as it will go forward.

20 JUDGE KELLETT: It's a modern
21 miracle that we can see it at all.

22 BY MR. BROUSSEAU:

23 Q. Who is the female officer that just came
24 in the frame at around 7:03?

25 A. In looked like Ofc. Vega.

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1 Q. So what is going on typically around 7:00
2 in the morning between A line and B line?

3 A. The A line shift would be winding down.
4 Sergeants would be getting some of their paperwork
5 together, which I think that's what Sgt. Abbott is
6 doing right now.

7 Q. That is Sgt. Abbott depicted in the still
8 at 7:09?

9 A. Yes.

10 Q. And it looks like she's getting ready for
11 roll call?

12 A. Yes. Other staff members would be coming
13 into the facility getting ready to walk in the roll
14 call room. That's Sgt. Roy.

15 Q. (Pause.) Now we're here at around 7:20
16 a.m. Who is in the frame now?

17 A. Sgt. Higgitt is behind the desk and Sgt.
18 Connell is standing, and it looks like Ofc. Kosowsky
19 is looking at a schedule and he's sitting down.

20 Q. Now, who is that who just walked into the
21 room at 7:21:17?

22 A. Sgt. Roy.

23 Q. Who is that individual?

24 A. That looked like Ofc. Pachley.

25 Q. That's at 7:21:30.

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1 This looks like the point at 7:22:38 where
2 Lora Abbott comes back into the watch commander's
3 office?

4 A. That's correct.

5 Q. What is over there? Where is she going?

6 A. What Lora had told me was that she was
7 going back in because she wasn't sure if she had
8 locked her file cabinet up or not. She was pressing
9 the lock.

10 Q. As she's leaving, who is there in the
11 watch commander's office?

12 A. It looks like Sgt. Higgitt is standing at
13 the desk looking to his right. Connell was sitting
14 to the left of the desk, looking forward. Sgt. Roy
15 is standing at the corner of the desk and it looks
16 like he and Connor is facing Sgt. Higgitt. And
17 Jamie Kosowsky is still seated.

18 Q. It looks like Lora Abbott leaves and is
19 walking down the hall to the left and then down a
20 center hallway. Where would that take her?

21 A. I believe she's going to the captain's
22 office. I believe she was, yeah, to the captain's
23 office, or she may have gone to booking.

24 Q. Now, the gentleman on the left, all the
25 way to the left of the screen who just walked in,

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1 who is that?

2 A. It looks like Dan Hogel.

3 MR. LUIBRAND: Can we get a time
4 on that?

5 MR. BROUSSEAU: That's around
6 7:23:30.

7 BY MR. BROUSSEAU:

8 Q. And who is the individual that looks like
9 he's holding a box of Dunkin' Donuts?

10 A. It looks like Ofc. Reid.

11 Q. About 7:25, is this typical activity that
12 goes on in the morning at the change of shift in a
13 watch commander's office?

14 A. Yeah, from the appearance of it, just
15 people coming in, going back out again. Program
16 officers, probably. Officers that were just
17 relieved.

18 JUDGE KELLETT: What are we
19 supposed to be seeing?

20 MR. BROUSSEAU: This is the
21 incident from the watch commander's office,
22 the Michelle Hoffman incident, and I'm
23 trying to also establish who was in there
24 at the time. We actually have video of the
25 one event, so...

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1 BY MR. BROUSSEAU:

2 Q. At this point we haven't seen Sgt. Piche
3 at all; correct?

4 A. That's correct.

5 Q. (Pause.) This is Sgt. Piche now
6 approaching the watch commander's office?

7 A. That's correct.

8 MR. LUIBRAND: Can we get a time
9 on that?

10 MR. BROUSSEAU: It's 8:00.

11 BY MR. BROUSSEAU:

12 Q. And he's wearing a different colored
13 uniform from everyone else?

14 A. That's correct.

15 Q. Why is that?

16 A. He was a K-9 sergeant at the time.

17 Q. Who just walked in the room after Sgt.
18 Piche?

19 A. That looks like Ofc. Boston.

20 Q. It looks like Sgt. Piche is talking to
21 Lt. Higgitt and getting some coffee or something?

22 A. That's what it looks like.

23 Q. Who's the female officer who just
24 returned?

25 A. Lora Pipher (phonetic).

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1 Q. Sgt. Piche is gone by 8:02:31; correct?

2 A. Correct.

3 MR. LUIBRAND: Gone from the
4 room?

5 THE WITNESS: Gone from the room.

6 MR. BROUSSEAU: Judge, have you
7 been given permission to look at this on
8 your computer?

9 JUDGE KELLETT: Not yet, but I
10 did ask.

11 MR. BROUSSEAU: So we might as
12 well keep going then and see -- My notes
13 indicate Hal Smith comes in at 8:37.
14 There's no way to skip ahead any faster
15 than this; is there?

16 THE WITNESS: If you use the
17 larger, which you're right on the end;
18 right?

19 MR. BROUSSEAU: Uh-huh.

20 THE WITNESS: That's as fast as
21 you're going to get.

22 MR. BROUSSEAU: Okay. (Pause.)
23 Oh, no, my battery died.

24 (Break taken for computer
25 hookup.)

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1 BY MR. BROUSSEAU:

2 Q. Lt. Karam, now we're at 8:37:43, and who
3 is that coming into the office?

4 A. I would say it's me, based on the bald
5 head, but it looks like Capt. Smith from behind.
6 Yeah, that's Capt. Smith.

7 Q. So it looks like Capt. Smith comes in and
8 it looks like he's taking a look at the roll call
9 sheet?

10 A. He's looking at something. I'm not quite
11 sure what paperwork he's looking at.

12 Q. (Pause.) Now, we're at 8:41:56, and it
13 looks like Capt. Smith is now back in the room with
14 Sgt. Higgitt and he appears to be talking to him and
15 pointing at a piece of paper; right?

16 A. Yep.

17 Q. So, again, you're recollection of what
18 happened that day was Capt. Smith came to you and
19 told you what was going on, and you told Capt. Smith
20 to move her back; correct?

21 A. That's correct.

22 Q. And she was moved -- and Michelle Hoffman
23 was moved back; correct?

24 A. That's correct.

25 Q. All right. Now, when you reviewed this

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1 video as part of your investigation, were you able
2 to observe any laughing or anything like that at
3 Lora Abbott when she enters the room or shortly
4 after she leaves the room?

5 A. No.

6 Q. I don't think we have to keep going
7 through this then.

8 And that was Lora Abbott's last day on the
9 job? I think we already went over that; correct?

10 A. That's correct.

11 Q. You had further contact with Lora Abbott
12 after she was off the job. We've established that
13 you met with her a couple of times and shredded
14 paperwork, etcetera?

15 A. That's correct.

16 Q. And you took a recorded interview of Lora
17 Abbott regarding the sexual harassment complaint as
18 well as some of her allegations regarding retaliation?
19

20 A. That's correct.

21 Q. Did she ever tell you that she understood
22 that you and Capt. Smith were doing everything you
23 could to address her concerns?

24 A. She had written in one of the reports -- I
25 believe it was the report that she wrote on the

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1 19th -- she had told me that the day that she had
2 left that she only trusted me and I think it was
3 Master Sgt. Patricelli (phonetic) and that's when I
4 said just deal with me on that stuff and don't
5 contact anybody else.

6 At that point she didn't have faith that
7 Capt. Smith was going to be able to handle anything
8 with regards to this situation correctly, and Lt.
9 Hetman as well.

10 Q. And at a certain point you also -- now
11 Lora Abbott is off, not working there anymore, and
12 Michelle Hoffman is continuing to work there and
13 Michelle Hoffman also made a complaint of sexual
14 harassment and at least one complaint against Sgt.
15 Piche; correct?

16 A. That's correct.

17 Q. And there came a time after June 25th,
18 2010, where you did a recorded interview of Michelle
19 Hoffman; correct?

20 A. That's correct.

21 Q. And did you ask Michelle Hoffman if she
22 was experiencing any retaliation?

23 A. I believe I may have in the interview.
24 There were no complaints after the one that she
25 wrote about Sgt. Piche, she made no further

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1 complaints.

2 Q. Did you talk to her about what she should
3 do if she experienced retaliation?

4 MR. LUIBRAND: Can we get the
5 she's down?

6 MR. BROUSSEAU: Yes.

7 BY MR. BROUSSEAU:

8 Q. Did you talk to Michelle Hoffman about
9 what she should do if she experienced any
10 retaliation?

11 A. I believe so. I believe I told her to let
12 me know if anything happened, to come to me directly
13 with it.

14 Q. You told her no retaliation would be
15 tolerated?

16 A. Yes.

17 Q. I'm going to show you -- Actually, let me
18 get it marked first.

19 (Respondent's Exhibits 21 and 30
20 marked for identification.)

21 BY MR. BROUSSEAU:

22 Q. I show you what's been marked as
23 Respondent R-21 and ask that you take a look at
24 that.

25 A. (Witness complies.)

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1 Q. Is that the general Rensselaer County
2 sexual harassment policy that would have been in
3 effect at the time?

4 A. It appears to be, yes.

5 MR. BROUSSEAU: I would offer
6 R-21 into evidence.

7 JUDGE KELLETT: Any objection?

8 - - -

9 VOIR DIRE DIRECT EXAMINATION

10 BY MR. LUIBRAND:

11 Q. This is the Rensselaer County --

12 A. This is the general county policy, yes.

13 Q. Does the sheriff have a procedure?

14 A. Yes.

15 Q. What's that?

16 MR. BROUSSEAU: I'm going to show
17 him next.

18 BY MR. LUIBRAND:

19 Q. So the one we're looking at is not for the
20 Sheriff's Department?

21 A. It's the policy that the county developed.

22 Q. Which is not the Sheriff Department's
23 policy?

24 A. Because the Sheriff's Office is a dual
25 employer, there's two.

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1 Q. There's two different policies?

2 A. There is this one that the county comes up
3 with and one specific for the Sheriff's Office.

4 Q. And this one, when you are referring to R,
5 R what, when you say "this one"?

6 A. R-21.

7 Q. R-21 is the county policy and there's
8 another policy, which is the sheriff's policy, which
9 we haven't seen yet?

10 A. Yes.

11 JUDGE KELLETT: But both apply to
12 sheriff's employees because they're really
13 employed by the sheriff and not the county;
14 Is that what you're saying?

15 THE WITNESS: The one that we
16 file is the next one.

17 MR. BROUSSEAU: That's the
18 general policy; this other policy?

19 THE WITNESS: Yes.

20 BY MR. LUIBRAND:

21 Q. I just want to be clear. Does R-21 apply
22 to how sexual harassment is handled within the
23 Sheriff's Department?

24 A. Again, I believe this was the basis for
25 the policy, the specific policy for the Sheriff's

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1 Office. So that policy, whatever number that is
2 going to be, Mr. Brousseau has, was based off of
3 this.

4 Q. My question stands. Is R-21 the policy
5 for sexual harassment that applies to the Sheriff's
6 Department?

7 A. I would say that it is that policy, the
8 next policy that Mr. Brousseau has.

9 JUDGE KELLETT: Listen to the
10 question. He wants to know about R-21.

11 BY MR. LUIBRAND:

12 Q. Is the policy in your hand, R-21, which at
13 the top says Topic, Sexual Harassment, is this the
14 policy that was applicable to the Rensselaer County
15 Sheriff's Department in 2010?

16 A. No.

17 MR. LUIBRAND: Okay, then I
18 object to the document.

19 JUDGE KELLETT: What is the
20 relevance then?

21 MR. BROUSSEAU: The relevance is
22 it is the general policy for the county
23 that is the genesis of this policy. I just
24 wanted it to be complete.

25 JUDGE KELLETT: I'll allow it to

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1 come in for what it's worth then, but note
2 clearly on the record it is not the policy
3 applicable to the Sheriff's Department.

4 (Whereupon, Respondent's 21 was
5 received into evidence.)

6 - - -

7 DIRECT EXAMINATION

8 CONTINUED BY MR. BROUSSEAU:

9 Q. Let me show you what's been marked
10 Respondent 30, which is titled Rensselaer County
11 Sheriff's Department General Order, it looks like
12 it's general order number 01 SD 96.

13 MR. BROUSSEAU: And I gave you
14 the copy there, Kevin.

15 BY MR. BROUSSEAU:

16 Q. Is that the specific policy for the
17 Rensselaer County Sheriff's Department regarding
18 sexual harassment that would have been in place at
19 the time that Lora Abbott made her complaint?

20 A. Yes.

21 MR. BROUSSEAU: I would offer
22 that into evidence.

23 JUDGE KELLETT: Mr. Luibrand?

24 MR. LUIBRAND: I would like to --
25 I've just been given this one. Could I be

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1 given a minute?

2 JUDGE KELLETT: Of course.

3 (Pause for document review.)

4 MR. LUIBRAND: I have no
5 objection, your Honor.

6 JUDGE KELLETT: It is received.
7 Are you going to question him on it?

8 MR. BROUSSEAU: No.

9 JUDGE KELLETT: Then I'll take
10 it, please.

11 (Witness complies.)

12 JUDGE KELLETT: Thank you.

13 (Whereupon, Respondent's 30
14 received into evidence.)

15 - - -

16 DIRECT EXAMINATION

17 CONTINUED BY MR. BROUSSEAU:

18 Q. Is Lora Abbott still an employee of the
19 Rensselaer County Sheriff's Department?

20 A. Yes.

21 Q. What is her current status?

22 A. She's out on leave.

23 Q. Out on disability leave?

24 A. I believe.

25 Q. Since June 25th of 2010, have any of the

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1 women involved in these sexual harassment investiga-
2 tions - Wendy Vega, Stacy Stover, Wendy Hoffman --
3 have any of those individuals complained of any
4 retaliation by any male employees of the Rensselaer
5 County Sheriff's Department?

6 A. No.

7 Q. As far as the three individuals that Lora
8 Abbott has named as people who were in the group
9 that were making rat noises or calling her names -
10 Sgt. Piche, Sgt. Higgitt, Sgt. Connell -- and I
11 think we've already established Lora Abbott gave
12 Sgt. Connell a performance evaluation about that
13 same period of time; is that correct?

14 A. That she evaluated him?

15 Q. Yes.

16 A. It's possible that she did.

17 Q. Okay. Did you take a look at the work
18 schedules to see how often Lora Abbott had worked
19 with Sgt. Piche or Sgt. Higgitt or Sgt. Connell
20 after she reported Sgt. Fenton for sexual harass-
21 ment?

22 A. I believe it was how many times she worked
23 with Sgt. Piche and Sgt. Higgitt.

24 Q. Did you make a determination that they
25 worked together a lot after the 25th?

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1 A. It was a minimal amount of time that they
2 would have actually worked full shifts together.

3 Q. Has anyone other than Lora Abbott told you
4 that they overheard or they saw anyone making any
5 derogatory comments to Lora Abbott or making rat
6 noises to her?

7 A. Other than Michelle Hoffman putting it in
8 her report, no.

9 Q. All right. Sgt. Connell wasn't actually
10 given a written warning for the way that he placed
11 Gary Caulfield, CO Caulfield; is that correct?

12 A. That's correct. It was an oral warning or
13 written warning, whatever the first step would have
14 been in the disciplinary process.

15 MR. BROUSSEAU: I don't have
16 anything further.

17 JUDGE KELLETT: Cross-examination?

18 MR. LUIBRAND: Thank you, your
19 Honor.

20 JUDGE KELLETT: Do you want to
21 take a brief moment?

22 MR. LUIBRAND: I don't need one.
23 I might take a short break before I end to
24 make sure I covered everything, but I'm
25 ready to go.

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1 (Discussion off the record.)

2 - - -

3 CROSS-EXAMINATION

4 BY MR. LUIBRAND:

5 Q. Lt. Karam, there were long lapses of time
6 between the occasions when Sgt. Fenton placed his
7 hands physically on Sergeants Stover, Abbott and
8 Hoffman; correct?

9 A. There is a long lapse of time between
10 Sgt. Fenton's contact, reported contact with Sgt.
11 Abbott.

12 Q. "Long" meaning a number of years?

13 A. A number of years, yes.

14 Q. How about Stover?

15 A. Same thing with Stover.

16 Q. Number of years?

17 A. And with --

18 Q. Yes, a number of years lapsed between when
19 it would have happened --

20 A. Yes, a number of years.

21 Q. Let me finish my question. A number of
22 years lapsed from when it happened until when she
23 reported it?

24 A. She didn't report it.

25 Q. How about Hoffman, how long between when

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1 she was physically touched and when she reported it?

2 A. That, I believe was -- that, I believe,
3 was March. If I can ask Lora, she would be able to
4 clarify it for me.

5 Q. That's okay. It was a number of months,
6 perhaps?

7 A. It was when Lora was out, that's when it
8 happened.

9 Q. And Lora was out February-ish time frame;
10 right?

11 A. Yes.

12 Q. And you would agree that Abbott, Stover,
13 and Hoffman did not welcome being touched in a
14 sexual manner by Fenton; did they?

15 A. That's correct.

16 Q. And yet they each allowed a substantial
17 amount of time to pass before they, in your words
18 referring to Abbott, had the courage to come forward
19 and report it; right?

20 A. That's correct.

21 Q. And part of the reason, if not all of the
22 reason, is they're in an environment that is a male
23 dominated environment; right? They're in a working
24 environment that is a male dominated work environ-
25 ment; correct?

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1 A. That's correct.

2 Q. It's a dangerous environment; right?

3 A. That's correct.

4 Q. And they had a fear of retaliation as a
5 result of coming forward?

6 MR. BROUSSEAU: Objection. He's
7 asking the witness as to what Lora Abbott
8 was thinking.

9 JUDGE KELLETT: I agree with that
10 objection.

11 MR. LUIBRAND: Okay.

12 JUDGE KELLETT: But perhaps Miss
13 Abbott told him.

14 BY MR. LUIBRAND:

15 Q. Tell us, based upon your experience, what
16 you viewed the reason that they did not come forward
17 when the events happened.

18 A. What I know about the investigation and
19 having talked to individuals after the fact, Lora
20 initially told Capt. Smith that there was contact
21 between Fenton and her, but that she said that she
22 didn't want to complain about it and that if Hal had
23 done something to complain about it, that she wasn't
24 going to testify to it -- or she wasn't going to
25 corroborate Hal's -- the captain's allegation about

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1 it.

2 And from what I understand at the time
3 when she told the captain that -- and this is
4 according to what I've heard from the captain -- he
5 was respecting her wishes to not cause her embar-
6 rassment at the work place and not to make an issue
7 out of this because it was her desire that no
8 complaint be made.

9 As far as the other two individuals,
10 Stover did not want to make a complaint about it,
11 and Hoffman also did not complain about it. But it
12 was Sgt. Abbott who found out about it during a
13 conversation in staff dining is when she found out
14 about it, and because of the discussion that Lora
15 had had with Sgt. Stover about the pact, this pact
16 that supposedly existed between her and Sgt. Stover
17 that they weren't going to stand for any of the new
18 staff members becoming victimized by Sgt. Fenton,
19 she -- I don't know if Sgt. Abbott directed Ofc.
20 Hoffman to do the report or encouraged her to do the
21 report, but that's when it was first documented when
22 we had something or at least I had something action-
23 able to go on.

24 Q. What did you conclude was the reason it
25 was not documented for such a long period of time

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1 after each of the women experienced sexual assaults
2 by Sgt. Fenton?

3 A. As I've already explained, I believe that
4 the first one was because Sgt. Abbott did not want
5 to make a complaint about it at that time.

6 I believe the second incident was unknown
7 to myself and I don't know if it was shared with
8 anybody else, and that would be the Stover incident.

9 And the third incident was documented when
10 Sgt. Abbott found out about it, so...

11 Q. I don't believe you're answering my
12 question and I'm going to try and rephrase it.

13 A. I'm sorry.

14 Q. I'm asking why didn't they come forward
15 sooner?

16 A. That I'm not -- I don't know. I really
17 don't know why they didn't come forward sooner. It
18 was their responsibility -- or it was Sgt. Abbott's
19 responsibility when the first incident happened as a
20 sergeant and also as a victim, to have documented it
21 and done something about it right then and there.

22 When they found out about Stover, when she
23 found out about Stover in that incident, that should
24 have been documented and forwarded right then and
25 there.

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1 When it came to Hoffman, Hoffman's
2 incident was documented and Sgt. Abbott then took
3 the right steps with either requesting that report
4 from Ofc. Hoffman or directing her to do it. I'm
5 not quite sure which one it was.

6 JUDGE KELLETT: I thought he
7 wasn't answering your question, but that's
8 fine.

9 BY MR. LUIBRAND:

10 Q. Did you give any consideration in your
11 role as to why each of them would not have come
12 forward sooner after they had experienced the actual
13 physical assaults?

14 A. Can you just say that again for me? I'm
15 sorry.

16 Q. Sure. Have you ever given consideration
17 as to why they would not have come forward sooner
18 after they had actually experienced the physical
19 assaults?

20 A. I didn't question Sgt. Abbott's reluctance
21 to come forward at the time. Again, I was trying to
22 be -- with Sgt. Stover, I was trying to be as
23 cautious as possible with a possible complaint,
24 someone that was reluctant to come forward about it,
25 because by the time we did end up getting the

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1 complaint from Sgt. Abbott, I had two out of three.
2 I needed the third one.

3 And so, you know, I didn't want to force
4 Sgt. Stover into making a complaint that she didn't
5 want to make a complaint. I didn't want to have to
6 discipline her for not cooperating with the
7 complaint.

8 If that answers your question; if not, you
9 can ask it again. I'll try to go over it, but those
10 are my concerns.

11 Q. Do you know why they didn't want their
12 complaints -- withdraw.

13 Do you know why they wouldn't want some-
14 body who is sexually touching them in an unwanted
15 manner, why they wouldn't want that addressed and
16 reported? Why wouldn't they?

17 MR. BROUSSEAU: Objection. He's
18 asking the witness what they thought.

19 JUDGE KELLETT: If he doesn't
20 know, he can say he doesn't know.

21 THE WITNESS: And I really don't
22 know why it didn't happen.

23 BY MR. LUIBRAND:

24 Q. Did you, in your role, give consideration
25 to the possibility that accepting sexual harassment

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1 was an easier path than enduring retaliation, had
2 they reported the sexual harassment?

3 MR. BROUSSEAU: Same objection.

4 JUDGE KELLETT: Well, actually I
5 don't know that I have had any evidence
6 that makes me suspect any of the women
7 involved accepted -- the testimony from
8 your client was that she took care of it by
9 a very deliberate statement to the offender
10 as to what she would do if it happened
11 again.

12 So I'm going to say the question
13 is inappropriate because it is assuming
14 facts not in evidence.

15 BY MR. LUIBRAND:

16 Q. Did you give consideration as to whether
17 the prospects of retaliation, if they had reported
18 it, outweighed the act of reporting the sexual
19 harassment?

20 A. I would say no.

21 Q. Why not?

22 A. Because I encouraged everybody that if
23 they had -- if there was retaliation that was
24 occurring, that they needed to come to me and talk
25 to me about it and we would take care of it. My

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1 steps have been -- my steps have been just that.

2 Q. Who did you encourage and when?

3 A. About retaliation, if anything is said?

4 Well, when Sgt. Abbott came to me and said this is
5 what's happening and here's the retaliation that I
6 see occurring, we took steps to move Hoffman off of
7 the housing unit.

8 Q. Which was the end of June?

9 A. Right.

10 JUDGE KELLETT: That's the day
11 that it occurred?

12 MR. LUIBRAND: June 25th, I
13 believe.

14 THE WITNESS: She would have
15 spent minutes on the housing unit.

16 BY MR. LUIBRAND:

17 Q. But that was the date, the date we're
18 talking about is June 25th?

19 A. The date that the -- yeah, the date that
20 that incident happened, which was the 25th, was it?

21 Q. Now, according to your notes, there was
22 nothing relayed to you by Capt. Smith from the date
23 that Sgt. Abbott reported Sgt. Fenton until May 27th
24 of 2010; correct?

25 A. As far as?

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1 Q. Retaliation directed towards Sgt. Abbott.

2 A. I believe that to be correct.

3 Q. Do you know -- if you look at R-30. You
4 might still have that in front of you. That's the
5 general order.

6 JUDGE KELLETT: I'm passing it to
7 the witness.

8 BY MR. LUIBRAND:

9 Q. Go to the second half of it. There's
10 pages one through four and then there's another
11 section that's pages one through three.

12 Do you see the second section?

13 A. Yes.

14 Q. Would Capt. Smith be the first line
15 supervisor?

16 A. If he was the first one that it was
17 reported to.

18 Q. So if the testimony -- I'll ask you to
19 assume that Sgt. Abbott on a fairly regularly basis,
20 daily when she was working, would go in and report
21 to Capt. Smith acts of retaliation directed towards
22 her. Would he then assume the role of first line
23 supervisor for purposes of this order?

24 A. For purposes of that, yes.

25 Q. And according to the order, his responsi-

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1 bility was to properly investigate the violations;
2 right?

3 A. That's correct.

4 Q. Anything that you learned through this
5 investigation that leaves you to believe that he
6 investigated anything?

7 A. I think he did look into things. I don't
8 think that he did a thorough investigation as far as
9 writing reports and putting stuff down.

10 I think that he took actions that he
11 deemed necessary, but it was more on an operational
12 level than it was on an investigative level. Again,
13 he handles things operationally and when problems
14 arise or if they're directed to his attention, he
15 should be handling them operationally.

16 So let's say for instance the issue with
17 Caulfield being put on a housing unit that he
18 shouldn't have been put on, when that was brought to
19 his attention, he did the discipline on it.

20 What would be considered his investigation
21 would be looking at the assignments and the paper-
22 work that already been filed and in determining that
23 the assignment was incorrect according to the
24 ownership, and then doing the discipline on it.

25 Q. Staying in accord with this R-30, this

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1 responsibilities of the first line supervisor --
2 forgetting about Hoffman -- when Sgt. Abbott goes in
3 and says here's what's happening to me today to
4 Capt. Smith, his duty is to properly investigate
5 what happened; right?

6 A. According to this, that's correct.

7 Q. And the procedure is to conduct a thorough
8 preliminary investigation into the facts and circum-
9 stances of the allegation; right?

10 A. That's correct.

11 Q. And he didn't do that; did he?

12 A. Not to my knowledge, no.

13 Q. And he's supposed to direct -- let me
14 finish. He's supposed to direct Sgt. Abbott to
15 place in writing any allegations that she has;
16 right?

17 A. Yes, that's correct.

18 Q. And then he's supposed to submit it to his
19 superior, his supervisor within five days of being
20 notified; right?

21 A. That's correct. But let me, if I could --

22 Q. Let me just ask the questions --

23 A. -- correct what I was saying earlier,
24 which was no. But as far as the sexual harassment
25 complaint is concerned, yes, he did and the forms

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1 are actually there and are filled out.

2 In fact, if you look at the back of this
3 and you look at the reporting, the sexual harassment
4 complaint form, this right here, I actually drove
5 this out to Jimmy Seabury's house to have Lora fill
6 it out and bring it back and then Hal and I believe
7 Lt. Hetman filled out their sections of this.

8 So for the purpose of this policy, yes,
9 that did happen for the sexual harassment. I just
10 wanted to make that clear.

11 Q. I'm talking about retaliation.

12 A. Yes, I understand that.

13 Q. Let me ask you this. Is this the
14 procedure used when there's retaliation as well?

15 A. No.

16 Q. Is there another procedure?

17 A. Yeah, to report it to the supervisors and
18 the supervisor to handle it, or the next line super-
19 visor to handle it.

20 Q. So if there's retaliation for having
21 reported sexual harassment, then Sgt. Abbott's
22 responsibility is to tell her front line, first line
23 supervisor; right?

24 A. Yes, sir.

25 Q. Which is Capt. Smith, who she told; right?

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1 A. Yes.

2 Q. And then Capt. Smith's responsibilities
3 are set forth in this document, what he's supposed
4 to do is set forth in R-30, the second section,
5 which is order number 002 FD 96; right? That's what
6 he's supposed to do?

7 A. Yes.

8 Q. Right? And he did not do this; did he?

9 A. For sexual harassment?

10 Q. For retaliation for sexual harassment. He
11 did not do that?

12 A. No.

13 Q. All right. And when Sgt. Abbott came to
14 you in June, she was crying and upset; right?

15 A. That's correct.

16 Q. And she told you that she's been telling
17 Capt. Smith on a regular, constant basis of the
18 retaliation she was experiencing; correct?

19 MR. BROUSSEAU: Object to the
20 form.

21 THE WITNESS: Correct.

22 JUDGE KELLETT: Overruled.

23 BY MR. LUIBRAND:

24 Q. And you didn't know anything about that;
25 did you?

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1 A. The constant retaliation that she was
2 supposedly enduring?

3 JUDGE KELLETT: No, that she had
4 been telling Smith.

5 BY MR. LUIBRAND:

6 Q. That she had been telling Capt. Smith.

7 A. No.

8 Q. And how often would you speak with Capt.
9 Smith back in May and June of 2010?

10 A. I would speak with him almost daily.

11 Q. And he never said anything to you about
12 what she was experiencing or what she was reporting?

13 A. No.

14 Q. And he never did any investigation as to
15 what she was reporting?

16 A. No.

17 Q. So what if you -- Let me ask you this.
18 You said you're friends with Sgt. Abbott; right?

19 A. That's correct.

20 Q. And you find her to be -- you found her to
21 be a good employee; right?

22 A. That's correct.

23 Q. Not a malingerer?

24 A. No.

25 Q. Not a complainer?

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1 A. No -- Well, let me back that up. Not a
2 malingerer and a good employee, but Lora would, she
3 would complain about a lot of stuff, everything.

4 Q. Okay.

5 A. And there are personal things that Lora
6 would talk to me about that I don't believe are part
7 of this investigation that she would come in and
8 complain to me about, and I'm not going to get into
9 any of that stuff, the personal issues and personal
10 relationship. But she would complain about stuff,
11 that's correct.

12 Q. She was good at taking orders?

13 A. Absolutely.

14 Q. And she was respectful of the chain of
15 command?

16 A. That's correct.

17 Q. That was never abused at any time?

18 A. Not to my knowledge, no.

19 Q. So when she comes in crying, upset to you,
20 you recognize that it's serious for her?

21 A. Absolutely.

22 Q. Which to you gives credibility to her
23 having said, I've been telling Capt. Smith this
24 everyday and he's done nothing? Did you believe her
25 when she told you?

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1 A. Some credibility in that, yes, yes.

2 Q. And there's nothing in this general order
3 about her going to you to tell you in your position
4 anything; right?

5 A. No.

6 Q. Her job is to tell Capt. Smith --

7 JUDGE KELLETT: Wait a minute.

8 You said no. The no -- is it -- he said
9 right.

10 Are you saying that his statement
11 -- there is nothing in there that says they
12 have to go to you is accurate or are you
13 saying no, it's not accurate?

14 THE WITNESS: I'm saying there's
15 nothing in here that says that they have to
16 come to me. It's reporting to the first
17 line supervisor.

18 BY MR. LUIBRAND:

19 Q. And that would be Capt. Smith?

20 A. Which would be Lt. Hetman for Sgt. Abbott.

21 Q. Or Capt. Smith?

22 A. Or Capt. Smith in Lt. Hetman's absence,
23 yes.

24 Q. Now, you testified that Sgt. Piche was
25 suspended?

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1 A. Yes.

2 Q. And you said he gave you the middle
3 finger?

4 A. It could have been me or it could have
5 been directed to the first sergeant, but it was in
6 our direction.

7 Q. You and the first sergeant were
8 together --

9 A. Or the Master Sgt. I'm sorry.

10 Q. You and the Master Sgt. Patricelli were
11 together, he gave you the middle finger, and he's
12 suspended?

13 A. That's correct.

14 Q. You didn't put him on notice; did you?

15 A. What do you mean?

16 Q. Well, when Sgt. Abbott came upset and
17 crying about what was happening to her, the
18 direction was put Piche on notice; right?

19 A. Piche wasn't the subject of her complaint.

20 Q. In your notes he is; isn't he? Put Piche,
21 Higgitt, Connell, Hayes on notice; right?

22 A. He was included on that as the union
23 president to make sure the word got out to everybody
24 else that they all had to basically back down and be
25 put on notice because they didn't know about the

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1 sexual harassment complaint. They all thought it
2 was over the sleeping incident, which wasn't.

3 Q. Did you consider when you were given the
4 finger to just put Piche on notice?

5 A. It was more than just him giving the
6 finger.

7 Q. Okay.

8 A. Because he had been put on notice for
9 writing the stuff on the board prior to hopping in
10 his car and doing that.

11 So it was a continuation of the same, you
12 know, his same conduct, basically. He was being put
13 on notice and given his piece of paper for writing
14 the stuff on the board, he goes out, hops in his
15 car -- this is all the same day -- and he does that
16 with his finger. And then we found out that the
17 night before is when he made the statements about
18 Lt. Hetman.

19 Q. And so then he's suspended?

20 A. One big package for everything, yes.

21 Q. In connection with Sgt. Abbott's complaint
22 when she comes crying and you learn that she'd been
23 telling Capt. Smith for at least a month about
24 retaliation, the thing that you did to Capt. Smith,
25 either he on his own or you told him, to place those

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1 five or four sergeants, supervisors on notice. That
2 was the consequence of what she reported to you?

3 A. That's incorrect.

4 Q. Isn't that what your notes say --

5 A. No.

6 Q. -- put them on notice?

7 A. The 21st was the placing them on notice.
8 The 25th is when she came in complaining about the
9 reassignment of Hoffman.

10 Q. When she came and was upset and crying and
11 said Capt. Smith had done nothing --

12 A. That was the 25th.

13 Q. Did you tell her at that point in time it
14 was to put them on notice?

15 A. No, it was the 21st when we put everyone
16 on notice. It was the 25th when she came in crying
17 about the issue with Hoffman and with Caulfield.

18 Q. Did you talk to her on the 21st when she
19 came in?

20 A. I don't believe so. I believe it was just
21 a report that was issued. I mean I may have talked
22 to her, but I think it was -- I think it was just
23 that I received a report from the Captain and I
24 reviewed the report and said this is what needs to
25 happen.

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1 I could have talked to her then, but the
2 bigger of the two incidents was the 25th. That's
3 when she came in and was very upset and said this is
4 what's going on; this is what they're doing to that
5 girl; this is what they did to Caulfield.

6 And in both incidents I took steps to make
7 sure that Connell got written up and that CO Hoffman
8 was moved. I did that immediately.

9 Q. In your notes of June 19th, '10, you say,
10 "Lora Abbott writes a report regarding the
11 harassment she has to deal with from employees after
12 she turned Fenton in for sexual harassment."

13 That's what you write in your notes;
14 right?

15 A. That's a note based on a report that was
16 submitted. It doesn't mean that this note or these
17 notes were taken in time as this was all occurring.
18 This was just a compilation of everything that --
19 all of these reports.

20 If the reports are submitted to Capt.
21 Smith, they don't necessarily make it to me that
22 exact day or that minute.

23 JUDGE KELLETT: I'm confused.

24 I'm confused. Let me ask a question,
25 please. A few questions.

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1 The Complainant comes in and says
2 they're making rat noises; they're
3 harassing me. It's in retaliation because
4 I reported sexual harassment. What is the
5 response?

6 What I'm hearing is the response
7 is, they're harassing you because you
8 reported him for sleeping.

9 THE WITNESS: No, that's not
10 correct.

11 JUDGE KELLETT: Well, let's clear
12 up what's going on.

13 THE WITNESS: No, again, the way
14 I see this as occurring is that the reports
15 were submitted to Capt. Smith and made
16 their way out to me and then I got them.

17 So it's not that somebody is
18 coming in the office to report it, and
19 we're talking on the 21st when the reports
20 come in.

21 So I read the report and then
22 say, this is what we need to do. We've got
23 to put people on notice. They think it's
24 something other than this.

25 And on the 25th when she came in

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1 and said, this is what they just did, and
2 this is actionable stuff I can work on and
3 correct, which is they moved Hoffman -- or
4 they placed Hoffman on this unit.

5 I corrected that right then and
6 there because it was actionable.

7 And then the second one was
8 Caulfield, Caulfield being placed some
9 place out. That was actionable. That was
10 taken care of.

11 So there's confusion about when
12 somebody came in and talked to me and when
13 reports were submitted. That's the issue
14 here. When Lora actually came in on the
15 25th, things were done that day.

16 BY MR. LUIBRAND:

17 Q. But her obligation wasn't to come to you;
18 her obligation was to go to Capt. Smith. She did
19 that; right?

20 A. Yes.

21 Q. All right. It was only that she went to
22 you after Capt. Smith failed her; right?

23 MR. BROUSSEAU: Objection to
24 form.

25 A. That's exactly what she said, she said she

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1 couldn't trust him and she didn't want to deal with
2 him anymore because she felt she wasn't getting
3 anywhere with him.

4 BY MR. LUIBRAND:

5 Q. And at that point in time, she's already
6 falling apart?

7 A. That's correct.

8 Q. And at that point in time is there any
9 notes you have or that Capt. Smith has that you're
10 aware of, of any -- either of you interviewing
11 Connell, Higgitt, Piche, Hayes, or those four people
12 about what they were doing to her or what she was
13 claiming they were doing to her? Is there anything?

14 A. No. The notes were -- it wasn't a note,
15 but the actions were to pull the video and to see
16 what was actually happening in the watch commander's
17 office that morning.

18 Q. That's June 25th; right?

19 A. That was the 25th.

20 Q. How about the month beforehand?

21 A. Those allegations never came to me. Those
22 complaints never came to me except on the 21st when
23 that stuff came in.

24 Again, how do you prove who said what,
25 when they're saying it was a noise that was made.

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1 You're not given it was Officer X, it was Supervisor
2 Y. They're noises; they're people.

3 The reports aren't specific. It's nothing
4 that can be followed up on.

5 But when it's actionable information, I
6 followed up on it and I did the discipline I had to
7 do, or at least made sure the discipline was done.

8 Q. Isn't it the obligation, both within the
9 rules and otherwise, that when she comes in and
10 says, this is what they're doing to me today, Capt.
11 Smith is supposed to go get the person who allegedly
12 did it and look at tapes and talk to the people that
13 were there then and say, Any of you see this? Any
14 of you know what's going on? Isn't that what
15 they're supposed to do?

16 A. That's what they're supposed to be.

17 Q. Because if a month goes by, nobody remem-
18 bers anything; right?

19 A. That's correct.

20 Q. And the rules are that's how it's supposed
21 to be; right?

22 A. That's correct.

23 Q. But Capt. Smith didn't investigate
24 anything as it happened; right?

25 A. I can't speak to exactly what he said or

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1 what he did.

2 Q. And when you were told what happened, you
3 didn't interview with respect to what happened over
4 that month? You didn't interview Higgitt, Connell,
5 Piche, or anyone as to what happened? Any of the
6 people who allegedly were causing her problems who
7 were harassing her?

8 A. You keep saying Piche. Piche was not in
9 her report that she submitted after she left on the
10 25th. His name is not in there.

11 JUDGE KELLETT: It's immaterial
12 whose name is in there. What we want to
13 know is what did you know when, and what
14 did you do with the information, that's the
15 important question.

16 THE WITNESS: What I ended up do-
17 ing was investigating the sexual harassment
18 complaint and interviewing people. That
19 was the biggest thing.

20 MR. LUIBRAND: Show him R-9,
21 please.

22 JUDGE KELLETT: Certainly.
23 Passing R-9.

24 BY MR. LUIBRAND:

25 Q. If you go to page 304, and at the

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1 bottom -- or the middle it says, "I'm finding it
2 virtually impossible to give my job the attention it
3 needs when I constantly have to watch my back from
4 these people; namely, Sgt. Piche, Master Sgt.
5 Higgitt, Sgt. Connell."

6 It's in there; isn't it?

7 A. Yes, it is. The specific that they did,
8 the action that they did; what is the specific that
9 they did that I should have followed up on?

10 That to me is the point of this thing -
11 What is it exactly that they did? And when? What
12 date did it happen? Did Sgt. Piche call Sgt. Abbott
13 a name? Did he make a noise? What time did it
14 happen? Where did it happen? I can check that on
15 cameras and do all of that stuff.

16 It's all general. It's all thrown in
17 there. The thing that was actionable to me were
18 things I can actually prove and discipline people
19 for.

20 Q. But going back to if Capt. Smith had done
21 his job as the rules say that he's supposed to, he
22 could have addressed each act as it happened,
23 allegations of rats or whatever, noises?

24 A. If that was reported that way, that's
25 correct.

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1 Q. Okay. So by the time
2 very hard to investigate what

3 A. My focus was mainly
4 ment at that time.

5 Q. But your focus was
6 sexual harassment; wasn't it?

7 A. Absolutely. Not completely. I shouldn't
8 say completely because there was other steps being
9 taken and other investigations that were occurring
10 and other job duties and responsibilities that I
11 handle.

12 Q. I understand.

13 A. But the biggest thing was to make sure
14 that Sgt. Abbott's complaint was investigated. And
15 I think I did a hell of a job with putting together
16 that whole investigation and getting rid of Sgt.
17 Fenton and doing it in a timely manner.

18 Q. Whose focus was the retaliation, to
19 investigate it?

20 A. It should have been Capt. Smith's as it
21 was happening.

22 Q. Now, do you recognize that by Capt. Smith
23 not investigating or taking steps when there's
24 retaliation for filing a sexual harassment complaint
25 that people would then become reluctant to file

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1 sexual harassment complaints?

2 A. I recognize that the majority of people
3 thought it was for sleeping.

4 Q. That's not my question, though.

5 Do you recognize the importance of
6 investigating and taking steps with respect to
7 retaliation for reporting sexual harassment is
8 needed so that people are willing to come forward
9 and report sexual harassment?

10 A. I do recognize that, and steps were taken
11 to discipline people for the perceived retaliation
12 that was occurring in the jail.

13 And I bring your attention back to Hoffman
14 with moving her off the housing unit; and Caulfield,
15 which was reported to me. And those were the
16 biggest things that came out of the report that Sgt.
17 Abbott had submitted after she left on the 25th.

18 Q. You testified here that you are also in
19 charge of training in the department?

20 A. That's correct.

21 Q. What sexual harassment training has been
22 given since the year 2000 to the sergeants in the
23 department?

24 A. Recently, I think it was in September,
25 they were all given sexual harassment training

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1 again; when staff members come through training,
2 they get sexual harassment; and some of the
3 supervisory basics, although not all of them, sexual
4 harassment is also a component of that.

5 Q. Prior to 2010, in the ten years before-
6 hand, what training in sexual harassment was given
7 by the department?

8 A. In service training, there was one in
9 1997.

10 Q. So 13 years before the allegations
11 regarding Sgt. Abbott and the other women, there had
12 been no sexual harassment training in the Rensselaer
13 County Sheriff's Department?

14 A. Again, that would depend on the employee
15 when they were hired and what training they
16 received. If they were hired after that date, they
17 would have gotten sexual harassment training. It's
18 part of their basic.

19 If they went to a supervisory basic that
20 included sexual harassment, if they were promoted
21 within that 13 year time frame, they would have
22 gotten sexual harassment training.

23 But in-service training between 1997 and
24 what we just did recently, there wasn't in-service
25 training for everybody in sexual harassment. It did

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1 not occur.

2 Q. Now, you testified on several occasions,
3 including just now in cross, that people believe
4 that the -- withdraw that.

5 You testified on several occasions that
6 while there may have been retaliation, that it must
7 have been because the sergeants believed that Sgt.
8 Abbott had reported Fenton for sleeping; right?

9 A. That was early on, yes.

10 Q. Of the complained harassers - Higgitt,
11 Connell, Piche - which one of them told you that
12 that was their reason for their actions?

13 A. I'm sorry, I don't understand that
14 question.

15 Q. Who told you that retaliation was occur-
16 ring because Sgt. Abbott had reported Fenton for
17 sleeping? Who told you that?

18 A. That was -- well, it was -- what I gleaned
19 from other staff members, talking to other staff
20 members inside the jail as to -- and just hearing
21 from the rumor mill what people thought was going on
22 with this investigation. And nobody knew during the
23 initial sexual harassment complaint that that's
24 exactly what it was, was that it was a sexual
25 harassment complaint that was going on.

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1 It was all kept pretty quiet. We didn't
2 want to put it out there for benefit of the
3 complainants; nor would we have put it out there.

4 Again, they all thought it was, you know,
5 the sleeping thing. There was one staff member that
6 had come in and given me a report on -- in fact, it
7 was Kelly Connell, who was Dave Connell's wife,
8 alleging that Sgt. Abbott was retaliating against
9 Sgt. Fenton and that she was trying to get her
10 husband tied up in this whole thing, and there were
11 some other unsavory things that were said in Kelly
12 Connell's report about Sgt. Abbott.

13 But a lot of that stuff was going back and
14 forth because no one really knew what the true heart
15 of the matter was, which was the sexual harassment
16 complaint, which finally surfaced.

17 Q. I want to follow up on actually what I had
18 asked you. You said that you gleaned from people
19 that they believed that the harassment was based
20 upon the sleeping reporting by Sgt. Abbott?

21 A. That's correct.

22 Q. So you had some idea that there was
23 harassment going on with respect to Sgt. Abbott?

24 A. Well, I believe that it was going on. If
25 there was anything going on, whether it was a noise

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1 being made or if anything was occurring inside the
2 jail, it was because of that.

3 Again, actionable information --

4 JUDGE KELLETT: Why would it be
5 because of that? I'm struggling with the
6 sleeping and the sexual harassment com-
7 plaint as kind of being simultaneous in
8 the report that I saw.

9 THE WITNESS: One preceded the
10 other one. The sleeping preceded the
11 sexual harassment.

12 JUDGE KELLETT: You're saying
13 people are hearing this. How are they
14 hearing about one and not the other? Who
15 would have been saying she reported him for
16 sleeping, but not, oh, she reported him for
17 sexual harassment?

18 THE WITNESS: Sgt. Fenton was
19 written up and he was served his disci-
20 pline, but he wasn't suspended. It wasn't
21 something we could have suspended him on,
22 so he was still at the work place. He was
23 still in the work place.

24 JUDGE KELLETT: So he was written
25 up for sleeping and that's what triggered

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1 it; is what you're saying?

2 THE WITNESS: I believe so.

3 JUDGE KELLETT: Do we know when
4 he was written up?

5 MR. BROUSSEAU: Yes, it's in the
6 documents. It was like April 27th, I
7 believe. It was a full month before the
8 sexual harassment complaint.

9 And then he's on the job for that
10 month. She makes the sexual harassment
11 complaint on the 25th, and then he's out of
12 work.

13 JUDGE KELLETT: It's getting a
14 little confusing. It seems like everything
15 is going on at the same time, so I'm trying
16 to distinguish why one and not the other.

17 Thank you. Sorry, go ahead,
18 counsel.

19 BY MR. LUIBRAND:

20 Q. Piche was president of the union?

21 A. That's correct.

22 Q. Would he be involved in any reports
23 concerning improper actions by employees?

24 A. I don't understand the question.

25 Q. If there's any allegations against an

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1 employee, would the president of the union be
2 informed?

3 A. That's correct.

4 Q. Was Fenton ever disciplined for sleeping?

5 A. I don't know if we actually took a
6 sanction from him; if we ever really made it to that
7 point because I think what happened was there was
8 the complaint, the charges for sleeping, and then
9 the process allows for arbitration, so that took
10 time, and it never really occurred.

11 The second incident -- not the second
12 incident, but the sexual harassment complaint then
13 came in and that was vigorously investigated.

14 And then I think the sexual harassment one
15 kind of took precedent over sleeping. Like I had
16 said earlier, sleeping, you can do up to four times
17 and, you know -- not that it wasn't a big issue. It
18 was a big enough issue.

19 But the focus was then on the sexual
20 harassment, and then that's what we ultimately
21 suspended him for, and then, you know, got rid of
22 him for the sexual harassment.

23 Q. Was there ever any charges advanced at
24 all --

25 A. Well, charges --

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1 Q. Let me finish. Let me finish.

2 Was there ever any discipline started
3 against Fenton for sleeping on the job?

4 A. Yes, yes.

5 Q. Was there ever any discipline filed
6 against Fenton for sex harassment?

7 A. Yes.

8 Q. You used a phrase that you wanted the --
9 withdraw that.

10 You used a phrase that when Sgt. Abbott
11 came to you complaining about what was happening to
12 her, that you wanted the people involved - Piche,
13 Connell and Higgitt - to knock off the high school
14 type stuff; right?

15 Do you remember using that phrase?

16 A. I possibly did.

17 Q. What do you mean by that high school type
18 stuff?

19 A. In the work environment, sometimes people
20 act like, they act like high schoolers.

21 Q. How so? What about their conduct led you
22 to believe that it should be characterized as high
23 school type behavior by these fellows?

24 A. It goes both ways and it's stuff that's
25 said. Like, for instance, in the report from Kelly

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1 Connell that she ended up writing, she said that
2 Sgt. Abbott had said to her that she had gotten her
3 promotion by performing oral sex on an admini-
4 strator.

5 Now, she put that in her report, and I
6 don't know if that actually was said or if it wasn't
7 said. The fact that there was this tit for tat
8 because she believed her husband was being targeted
9 by Lora Abbott, just -- it's childish. It makes no
10 sense to me.

11 And that's the kind of stuff that I talk
12 about. A lot of times the place is like, it's like
13 ice -- it's nonsense and rumors --

14 JUDGE KELLETT: I got lost on the
15 she's. Kelly --

16 THE WITNESS: No, that Lora did.

17 JUDGE KELLETT: Lora got a
18 promotion by doing oral sex?

19 THE WITNESS: Yes.

20 JUDGE KELLETT: That's what she
21 said?

22 THE WITNESS: Yes, that's what
23 she said.

24 A. In my statement, that's what I mean. It's
25 a lot of times it's nonsense. They did this to me;

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1 they did that to me; and it's childish, childish
2 stuff.

3 There was the incident with Fenton and
4 Sgt. Abbott, in the reports where Sgt. Abbott was
5 upset at the fact that Fenton wrote in a log book
6 that he was sent down to the unit to take care of an
7 issue by Sgt. Fenton. Sgt. Abbott took exception to
8 that.

9 He, he's supposed to write in the log book
10 when he goes on a unit when he's down there, and
11 Sgt. Abbott took it as though it was Fenton
12 attacking her about was he supposed to do that; why
13 he's on a unit and what the reason is for. She felt
14 that it was retaliation.

15 There was another incident where Sgt.
16 Knight --

17 JUDGE KELLETT: Is that the page
18 we looked at extensively; can we agree on
19 that?

20 MR. BROUSSEAU: Yes.

21 MR. LUIBRAND: Yes.

22 A. Sgt. Knight was yelled at because he was
23 going to do a switch with Sgt. Fenton, I believe,
24 and Sgt. Abbott was calling him a liar in roll call
25 because apparently at some point Sgt. Knight had

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1 said that he wasn't going to do the switch, but then
2 he changed his mind and did the switch and it upset
3 Sgt. Abbott. And so she was calling him a liar in
4 front of the people, which is referenced in Ofc.
5 Connell's report.

6 That's the kind of stuff that I'm talking
7 about when I'm talking about high school stuff.
8 It's just -- it's nonsense.

9 John can switch with whoever he wanted to
10 switch with, Johnny Knight.

11 Fenton is supposed to sign in the log book
12 when he goes down to the housing unit.

13 That is inter-dispersed in a lot of this
14 stuff. The main focus that I had was with the
15 sexual harassment complaint and making sure that I
16 can substantiate that because I had the three,
17 possible three complainants to the whole thing.

18 So in trying to wave myself through all of
19 these complaints and all of these reports, it was
20 the actionable stuff that I did take action on.

21 I can't tell you why other people did what
22 they did or why they didn't do things they should
23 have done, but I'm telling you I took it serious and
24 that's why Sgt. Abbott came to me to get this stuff
25 handled.

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1 BY MR. LUIBRAND:

2 Q. My question was that you characterized the
3 actions of Piche, Higgitt, and Connell towards Sgt.
4 Abbott as high school type stuff.

5 Is that what you meant, that that kind of
6 activity was high school type stuff?

7 A. What I just explained as examples is the
8 kind of examples that happens in there all the time,
9 and if they had any interaction with Sgt. Abbott
10 that that would be it.

11 But Mark Piche, there's nothing in the
12 reports that show that he did anything to Sgt.
13 Abbott specifically. He called her a name on a
14 certain date or he prevented her from getting
15 something on a certain date or he prevented her from
16 doing her job on a certain date, it's not in there.

17 It's not in the reports. It's just trying
18 to be made into something it's not. It's not in
19 there. He wasn't in the report that was submitted
20 after the 25th.

21 Q. What conduct directed towards Sgt. Abbott
22 by Connell, Higgitt and/or Piche would you
23 characterize as high school type stuff?

24 JUDGE KELLETT: I heard what it
25 was and it was going in both directions.

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1 Move on.

2 BY MR. LUIBRAND:

3 Q. You testified that no one complained of
4 being harassed after the reports except for Sgt.
5 Abbott; correct?

6 A. Can you please clarify after what reports?

7 Q. You said that after Sgt. Abbott submitted
8 her report and Hoffman and Stover to the extent she
9 did, submitted their reports, none of those other
10 women complained of retaliation except for Sgt.
11 Abbott; correct?

12 A. No, Hoffman complained about what she
13 perceived as harassment by Sgt. Piche.

14 But then since that date, since I did the
15 interview with her and Sgt. Piche, there have been
16 no complaints from Hoffman.

17 There have been no complaints from Stover.

18 MR. LUIBRAND: I would like to
19 have just a moment to go through my notes,
20 your Honor, and I'll wind up.

21 THE WITNESS: May I take that
22 break now?

23 JUDGE KELLETT: Yes, of course.

24 (Break taken.)

25 BY MR. LUIBRAND:

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1 Q. Do you have R-33, which is your notes in
2 front of you?

3 A. Yes, I do.

4 Q. If I look at your notes, there's an entry
5 for 4/27/10; do you see that?

6 A. Yes.

7 Q. And it has to do with Sgt. Fenton, and
8 then there's no entries for anything being done
9 between April 27th, 2010 and May 27th, 2010.

10 Do you see that?

11 A. Yep.

12 Q. And nothing happened during that period of
13 time by way of investigation or anything; correct?

14 A. I can't say that for 100 percent certain.
15 I don't know what steps, if any, the captain took,
16 you know.

17 Again, these are just, these are just
18 bullet points off of reports that were submitted and
19 then memories that I may have had.

20 Q. Did you ask Capt. Smith at any point in
21 time what, if anything, he did from April 27th to
22 May 27th as far as relates to any actions directed
23 towards Sgt. Abbott?

24 A. No.

25 MR. LUIBRAND: That's all I have.

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1 Thank you, your Honor.

2 JUDGE KELLETT: Redirect?

3 MR. BROUSSEAU: Just a couple.

4 - - -

5 REDIRECT EXAMINATION

6 BY MR. BROUSSEAU:

7 Q. Sgt. Kevin Smith has given testimony at
8 this hearing. You haven't talked to Capt. Smith
9 about his testimony at this hearing; have you?

10 A. No.

11 Q. Have you ever reviewed his transcript?

12 A. No.

13 Q. Did you review Lora Abbott's transcripts?

14 A. No.

15 Q. Do you know what -- do you know if Lora
16 Abbott was giving Capt. Smith any details regarding
17 this alleged harassment?

18 A. Well, can I back up, because now as I'm
19 thinking about my answer -- No, Capt. Smith and I
20 did talk about, we did talk about -- we didn't talk
21 about -- no, we didn't talk about his testimony. We
22 didn't talk about his testimony.

23 Q. Because you were here that one day?

24 A. Yep.

25 Q. Do you know what details regarding this

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1 alleged harassment Lora Abbott was giving to Capt.
2 Smith during these oral meetings?

3 A. During the meetings when she would talk to
4 him about stuff in the morning? No.

5 Q. Do you know what his testimony was
6 regarding whether he asked her to provide him with
7 more specifics so that he could do something?

8 A. I don't know.

9 Q. And when you received Exhibit R-9, which
10 was Lora Abbott's complaints dated 6/19 and then
11 reviewed by Capt. Smith on 6/21 regarding some
12 harassment, after that is when everyone was put on
13 warning?

14 A. That day.

15 Q. Now, on 6/21 -- or I'm sorry, do you have
16 R-9 with you still?

17 A. Yes.

18 Q. On R-9, reviewing R-9, does R-9 mention
19 anywhere people swearing at her?

20 A. I would have to read the whole thing
21 again.

22 Q. All right. Let me direct your attention
23 to the last page --

24 JUDGE KELLETT: Wait, he's
25 reading this.

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1 MR. BROUSSEAU: Oh, okay.

2 (Pause for review of exhibit.)

3 JUDGE KELLETT: Have you finished
4 your reading?

5 THE WITNESS: Yes, your Honor.

6 BY MR. BROUSSEAU:

7 Q. In that complaint, does Lora Abbott
8 complain about anyone swearing at her?

9 A. No. On page 4 of 4, I do have to point
10 out what I did find, though.

11 Q. What's that?

12 A. Which is in line with what you were
13 saying. It says that "most people don't realize why
14 Sgt. Fenton is out and so they were making up
15 stories for gossip. Myself and Hoffman have been
16 berated, belittled, humiliated and embarrassed."

17 Q. I'm going to refer you to the last page,
18 top paragraph, where it says, there's a sentence,
19 "They think and call me a rat because they assume
20 he's out of work because he made a bed and was
21 sleeping. The administration knows better."

22 And after you read that report, that's
23 when you had everyone put on warning; right?

24 A. That's correct.

25 Q. Okay. And then the second time was June

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1 25th -- or withdrawn.

2 You also were dealing with a retaliation
3 complaint from Michelle Hoffman where she made a
4 specific complaint that Sgt. Piche made a statement
5 to her; correct?

6 A. He didn't make -- she felt that the
7 statement was made to her.

8 Q. And you investigated that and you talked
9 to Piche?

10 A. Yes.

11 Q. Then she had her typewritten report that
12 she gave to you on June 25th, 2010, after the
13 incident in the control room; right?

14 A. It was dated the 25th, but I think I got
15 it, I think I got it like the next day I think, or
16 maybe the day after.

17 Q. And in that she complains about Sgt.
18 Caulfield or Gary Caulfield's placement, and then
19 she complains about Michelle Hoffman's placement.
20 And again in this document, did she make any
21 specific claims of anyone swearing at her or calling
22 her a rat?

23 A. I don't believe there's anything in there
24 specifically. I would like to take a look at it,
25 though.

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1 JUDGE KELLETT: What document do
2 you want him to review?

3 MR. BROUSSEAU: I'm sorry, R-12.
4 I thought you had it.

5 MR. LUIBRAND: The document
6 speaks for itself. If it's in there; it
7 is. If not, it's not; right?

8 JUDGE KELLETT: I'll give him
9 R-12.

10 THE WITNESS: With a quick
11 glance, I don't see anything in there.

12 MR. BROUSSEAU: No further
13 questions.

14 - - -

15 RECROSS-EXAMINATION

16 BY MR. LUIBRAND:

17 Q. In keeping with that, in that same
18 exhibit, which is R-12, Sgt. Abbott reported at page
19 five, "I hear them call me rat and bitch under their
20 breath;" right? Page five, the second to last
21 paragraph.

22 A. Second to last -- oh, I'm sorry. Yes,
23 sir.

24 Q. And at page one, the first page of it, she
25 said that "Lt. Hetman has his hands tied"; right?

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1 A. Yes, sir.

2 Q. And that she was told by Capt. Smith that
3 he doesn't know what to do; right?

4 A. That Capt. Smith doesn't know what to do?

5 Q. She says, "I have been told by Capt. Smith
6 that he doesn't know what to do."

7 A. That's what it says.

8 Q. And that "the humiliating and embarrassing
9 bullying has gotten out of control"?

10 A. And that is --

11 Q. On that next sentence, right after that.

12 A. Yes.

13 MR. LUIBRAND: That's all I have,
14 your Honor.

15 MR. BROUSSEAU: Just a quick
16 follow-up.

17 - - -

18 REDIRECT EXAMINATION

19 BY MR. BROUSSEAU:

20 Q. The sentence on page five about the, "I
21 hear them calling me a rat," can you read the
22 complete sentence?

23 A. "I hear them call me rat and bitch under
24 their breath, so I don't know who did it."

25 Q. Okay. So she did not know who was doing

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1 it; right?

2 A. According to that statement.

3 Q. And that's the statement she gave you
4 after she had left the job on --

5 A. This is the report I requested her to do
6 about what's been going on.

7 MR. BROUSSEAU: All right.

8 JUDGE KELLETT: Would it be fair
9 for me to assume that you need a specific
10 incident with names, places and allegations
11 of actions to investigate?

12 THE WITNESS: The reluctance of
13 people to report, your Honor, is a big
14 problem.

15 If incidents actually happen and
16 they can identify who's done it, then I can
17 build around that and who else was there,
18 what time did it happen. I can put people
19 in places.

20 It's what I had to do to
21 determine the incidents for Hoffman and
22 Stover because they couldn't remember the
23 day, but when they told me who they worked
24 with and what holiday it may have been
25 around -- Hoffman, when she was harassed

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1 had like Easter socks on with little chicks
2 or something I think her report says. So I
3 would -- so that's details that help me to
4 do that job.

5 If I don't have them, they're
6 allegations that are in the air and it
7 makes it very difficult for me to narrow
8 things down.

9 JUDGE KELLETT: How many people
10 work at the jail, roughly?

11 THE WITNESS: If I was to take a
12 guess, I would say -- well, I know there's
13 138 sworn staff, but not all the positions
14 are filled.

15 JUDGE KELLETT: But everyone we
16 talked about here is sworn staff?

17 THE WITNESS: Kristin Wing is
18 not; she was civilian.

19 And then there's another, I would
20 say, another 25 to 30 civilian staff.

21 JUDGE KELLETT: Thank you.

22 I have no further questions of
23 this witness. I'll take all your exhibits,
24 though. Thank you.

25 (Whereupon, the witness was

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1 excused.)

2 MR. BROUSSEAU: Your Honor, you
3 want to give me that one letter and I'll
4 get it marked and get it in before we
5 forget?

6 (Respondent's Exhibit 34 marked
7 for identification.)

8 MR. BROUSSEAU: I'm just going to
9 offer into evidence Respondent's Exhibit
10 34, which is a letter dated February 7,
11 2012 that I hand delivered to the Judge and
12 to Mr. Luibrand that contains my analysis
13 of the times when Sgt. Abbott, Sgt.
14 Connell, Sgt. Piche, and Sgt. Higgitt could
15 have worked together on the same shift,
16 according to the duty rosters and time
17 sheets that are in evidence already.

18 MR. LUIBRAND: I have no
19 objection for that limited purpose. It's
20 really an argument document, but I'm okay
21 with it as it's been described.

22 JUDGE KELLETT: Okay, and there
23 was an extensive attempt on the record to
24 try and figure out the schedules, some of
25 which seem to be repeated in that in terms

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1 of the number of days.

2 This is received and I do
3 appreciate this very much. Thank you.

4 (Whereupon, Respondent's Exhibit
5 34 was received into evidence.)

6 JUDGE KELLETT: Any further
7 witnesses or rebuttal witnesses?

8 MR. LUIBRAND: No, your Honor.

9 JUDGE KELLETT: Well then, I am
10 having Complainant's exhibits copied, so
11 hopefully that will be resolved.

12 Do we have any further issues?

13 MR. LUIBRAND: I don't think I
14 have a copy of that letter. I think I saw
15 it and I may have misplaced the very last
16 exhibit that just came in.

17 JUDGE KELLETT: Why don't I run
18 and make it?

19 MR. LUIBRAND: Thank you, your
20 Honor.

21 (Break taken.)

22 JUDGE KELLETT: Gentlemen, are
23 there any requests to submit post-hearing
24 findings of fact, conclusions of law?

25 MR. LUIBRAND: Yes, your Honor.

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1 MR. BROUSSEAU: Yes, your Honor.

2 JUDGE KELLETT: And how much time
3 do you think you need?

4 MR. LUIBRAND: Your Honor, I'm
5 going to ask for 60 days when I get the
6 last transcript.

7 JUDGE KELLETT: Thirty days from
8 receipt of the transcript.

9 MR. LUIBRAND: Thirty days, okay.

10 JUDGE KELLETT: Which should be
11 here in two weeks, within two weeks under
12 our contract. So that's going to be the
13 last week in April. April 30th? Is that
14 okay, April 30th?

15 MR. LUIBRAND: Is that simultane-
16 ous submissions, your Honor?

17 JUDGE KELLETT: Please.

18 MR. LUIBRAND: And do we direct
19 it directly to your Honor or some other
20 location?

21 JUDGE KELLETT: No, to me. Send
22 it to me.

23 - - -

24 TRANSCRIPT ORDER

25 MR. BROUSSEAU: I would like to

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1 order the transcripts.

2 MR. LUIBRAND: Yes, I order this
3 next transcript.

4 MR. BROUSSEAU: Yes, I already
5 have the other ones, and I want this one as
6 well.

7 JUDGE KELLETT: And they're going
8 to fix the pages.

9 MR. LUIBRAND: And for us as
10 well, so we can refer to what your Honor is
11 going to be looking at.

12 JUDGE KELLETT: Right. Which
13 when I looked at it, it got page numbers in
14 the index, so I really never even thought
15 to look at it.

16 Thank you very much, Christine,
17 for helping us with that. And thank you,
18 Counsel, for the hearing.

19 The matter is closed subject to
20 the receipt of the post-hearing briefs.

21 - - -

22 (Whereupon, the hearing
23 was concluded at 12:40 p.m.)

24 - - -

25

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C E R T I F I C A T E

STATE OF NEW YORK)

ss.:

COUNTY OF SARATOGA)

I, CHRISTINE GREENAWAY, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing transcript to which this Certificate is annexed is a true and correct transcript of my original stenographic notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the party hereto or financially interested in the action.

CHRISTINE GREENAWAY

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